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PIMBS BRIEFING

WINTER 2024



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From the editors

Welcome to the Winter 2024 edition of our briefing for Professional Institutes and Membership Bodies (PIMBs).

It is a great honour to welcome ourselves as the new editors of the PIMBs briefing. I Stephen Patey, Senior Manager, and Jamie Whale, Senior Manager will be leading and contributing to our biannual briefings which we hope you find are filled with relevant and thought-provoking articles for the sector. One thing we can all agree on, is that change is a constant. With the current ongoing Israel-Gaza conflict and the cost of living crisis, there are many areas of concern for the industry to consider.

To begin, I share some thoughts around VAT, looking at the ongoing hot topic of Business v Non Business activities. This is currently something that is receiving a lot of attention and challenge from HMRC. I look at the complexities involved and what it might mean for your organisation, and things you can do to address this.

Our first guest author, Max King, Head of Epoch Consulting, gives us an insight into considering whether your investment policy is fit for purpose. It is frequently noted that many organisations have outdated policies, and Max shares a number of objectives for organisations to take into account when reevaluating and refreshing theirs.

My co-editor, Jamie, goes into detail on relieving the increased Corporation Tax burden. Due to the recent increases, this highlights the importance of organisations making use of the tax reliefs available across capital allowances and research and development relief and how we can help you with this process.

On the back of the seemingly long running discussion within professional membership bodies on board composition and governance, our second guest author, David Sneesby, CEO, The LSL Group, discusses the crucial shift from all-elected to blended boards. He goes on to review what the shift has been, and what has now become the new normal.

Finally, Nick Bustin, Employment Tax Director, draws our attention to the latest campaign from HMRC regarding employment status alert. The recent change will now mean that PIMBs organisations will be included as part of their target audience. Nick provides a helpful insight into what this means for your organisation going forward, what HMRC are looking for, and how we can help with a proposed response.

We hope you enjoy this edition and find these articles of interest. Do feel free to let the articles' authors, me, Jamie, or your regular contact know if you have any questions concerning the matters discussed. I would welcome any feedback on this Professional Institutes and Membership Bodies Briefing and, in particular, any topics you would like us to consider for future editions.



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VAT: Business v Non Business

The question of whether something is a business activity or a non-business activity continues to be a “hot topic” in the world of VAT, and unfortunately, it appears to be becoming ever more topical as we have seen HM Revenue & Customs (HMRC) Officers of late challenging the treatment being adopted by many of our clients.



This has always been a complex area of VAT. If an activity is deemed to be business related, then the question of whether the activity involves making taxable or exempt supplies needs to be considered and there may then be the opportunity to recover VAT on associated costs.

On the other hand, if an activity is deemed to be non-business in nature, then there is no VAT required to be accounted for and no VAT on associated costs can be recovered. However, certain reliefs may become available. It is therefore an area which can have an impact on both your income and your costs.

HMRC did provide some clarification regarding this complex area back in 2017 by issuing updated guidance to assist entities in determining whether something was business or non-business. This was broadly welcomed and essentially provided six indicators derived from the Lord Fisher case in the 1970s which could be used in answering the question of whether an activity was a business activity.

The business versus non-business question reared its head again in the Wakefield College case in 2018. The Court of Appeal in the case refined the tests, and essentially this is now a two stage test. Firstly, is there a supply and secondly, if there is a supply, is it made in the course or furtherance of a business? Crucially though, the Court went on to say that the answer to the question of whether there was a business activity required a “wide-ranging, not a narrow, enquiry”. The Courts and HMRC guidance have consistently stated that motive is irrelevant in determining whether an activity is a business activity.

The reason for the apparent change of approach from HMRC Officers that we have been witnessing appears to stem from the Revenue & Customs Brief 10 (2022) which was published by HMRC on 1 June 2022. The Brief itself seems to be cementing the two stage test refined by Wakefield, with the first test being whether the activity results in a supply of goods or services for consideration and secondly whether the supply is made for the purpose of obtaining income therefrom. When it was first published it therefore appeared somewhat innocuous as this did not signify a major change to the position, the test remained the same as had always been the case.

However, we have been seeing Officers suggesting that the Brief does significantly change the position, with some Officers citing the Brief and arguing that the fact that something is being charged for automatically means it is a business activity, or other Officers asking whether an activity is for the purposes of generating income without first ascertaining whether there has been a supply made. This clearly shows that HMRC are not looking at this in a “wide-ranging” context that is required under case law.

Essentially, it seems that HMRC are still of the belief that motive is relevant when all of the published guidance and case law states that motive is not relevant. Just because you may have a charitable motive for doing something, if you are making a supply of goods or services and that supply is being made for the purposes of obtaining income this would be a business activity.

So what does this mean for you? As noted, recently we have been seeing HMRC challenging the current approach taken by a number of our clients. If you have not recently reviewed the VAT position of your current activities, we would advise you to carry out a review of your activities and ask your advisors to carry out a VAT health check. In addition, if you are contacted by HMRC in order to carry out an inspection or enquiry into recent returns, we would advise you to obtain specialist advice in dealing with any enquiry at the outset.

This is a complex area of VAT, however, recent case law and the HMRC guidance should have simplified the position and not made it more of a challenge.



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Is your investment policy fit for purpose?

Trustees are required to formulate an investment policy that is in the best interest of the charity and its charitable aims. There is an expectation that trustees will adopt an investment policy that they believe is representative of the charity's best interests.

A written policy provides a framework for making investment decisions, helping trustees to manage the organisation's resources effectively and demonstrate good governance. Regardless of size, having a written investment policy is important for all organisations with investment assets.

Most organisations we come across have an Investment Policy or a Statement of Investment Principles. However, in most cases, the documents are either out of date or need refreshing.

In many cases it can be both.

In some scenarios we also find that the document was created by decision-makers that are no longer with the organisation. Naturally, as your organisation evolves, so does the need to maintain and improve your investment governance. This is increasingly important with a fast-changing, macro-economic background and an increased focus on many trustees looking to invest with an environmental, social and governance consideration.

Without a robust set of documents, it can be very difficult to observe how your investment manager(s) is/are doing. Not only should there be aspirational performance objectives, but your policy should also include appropriate benchmarks, any income requirements, tolerances to risk, ethical criteria, and diversification expectations.

Unsurprisingly, many decision-makers with an organisation have their own opinions on how this should look and therefore need help facilitating and documenting the objectives of the collective. Maintaining and reviewing the policy regularly is then paramount to ensuring the quality of your ongoing governance.

When working with organisations, we assess whether their objectives are:

- Clear?
- Prioritised?
- Realistic?
- Measurable?

In our experience, whenever we are presented with a policy document, almost every single one fails our CPR(M) test on one criterion. More than half fail on all four.

The success of anything can only be measured when you are clear on what you are trying to achieve.

Leaving significant amounts of monies in cash that you don't need or can't use – for example, permanently endowed funds - may be considered as no longer appropriate. Inflation is eroding capital, and many banks continue to pay paltry rates of interest despite the rate being higher. Couple this with the uncertain economic background, both at home and overseas, and the need for sound governance has never been greater.

The burden of ensuring that your investment portfolios are appropriately invested and can continue to deliver your objectives falls to trustees, financial directors and often other members of the senior management team.

Where time is an issue, or trustees only meet a few times a year, we have seen many organisations employing professional advisers to help. This can remove an element of risk and ensure there is a constant eye on the portfolio. They can also help provide a valuable insight to help your organisation achieve your objectives and ensure that the investment solutions are appropriate, suitable and the strategy is repeatable.



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The value of investments, and any income from them, can fall and you may get back less than you invested. Information is provided only as an example and is not a recommendation to pursue a particular strategy. We will only be bound by specific investment restrictions which have been requested by you and agreed by us. The opinions expressed in this document are not necessarily the views held throughout RBC Brewin Dolphin Ltd.

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Relieving the increased CT burden

The recent increase in the tax burden for companies emphasises the importance of benefitting from tax reliefs available. This note summarises two of the key reliefs from which a Corporation Tax (CT) paying PIMBs organisation may benefit, each of which have undergone recent changes:

Corporation Tax rate change

The increase in the rate of CT from 19% to 25%, initially proposed back in 2021, was introduced as planned from April 2023.

This means that, as of 1 April 2023, the rate has increased to 25% for companies with profits over £250,000. The 19% rate has become a 'small profits' rate, payable by companies with profits of £50,000 or less. Companies with profits between £50,001 and £250,000 will pay tax at the main rate reduced by a marginal relief, providing a gradual increase in the effective CT rate. Note, these limits are reduced according to the number of 'associated companies' in the corporate group – for example, a company with three associated companies may only make profits of £12,500 at a 19% rate of tax (£50,000 divided by four).

Capital allowances

The super-deduction regime, which gave a 130% enhanced First Year Allowance (FYA) to companies on the purchase of qualifying plant and machinery, came to an end on 31 March 2023. Instead, the Government has announced Full Expensing, a 100% FYA, which allows companies to deduct the cost of qualifying plant and machinery from their profits straight away with no expenditure limit. Qualifying expenditure will include most plant and machinery, as long as it is unused and not second-hand, but will not include cars. Full Expensing will be effective for acquisitions on or after 1 April 2023.

A 50% FYA for other plant and machinery including long life assets and integral features (known as 'special rate' assets) will operate along similar lines. The 50% balance is pooled and receives 6% writing down allowances each year thereafter. Full Expensing and the 50% FYA are only available for companies and not for unincorporated businesses.

The Government confirmed in the 2023 Autumn Statement that Full Expensing and the 50% FYA are each a permanent provision, having previously only promised support until March 2026.

The Annual Investment Allowance (AIA) is available to both incorporated and unincorporated businesses. It is also available on both new and used plant and equipment, provided it is newly purchased by the business and from an unconnected person. It gives a 100% write-off on certain types of plant and machinery up to certain financial limits per 12-month period. The limit has been £1 million for some time but was scheduled to reduce to £200,000 from April 2023, which has not yet happened. The Government has announced that the temporary £1 million level of the AIA will become permanent and the proposed reduction will not occur. The generous level of AIA means the relief is sufficient to cover all plant and machinery expenditure for most businesses, it amounts to "Full Expensing" for 99% of businesses.

The Government will also extend the 100% FYA for electric vehicle charge points to 31 March 2025 for CT purposes.

Companies and unincorporated businesses are also able to benefit from Structures and Buildings Allowance (SBAs) – this provides relief for the construction of new, and the enhancement of existing, building and structures used in the company's taxable trade. This therefore provides relief for expenditure that would not normally qualify for the more generous reliefs described above.

The relief is 3% per annum on a straight line basis meaning relief is obtained in full over 33 years. The relief is not available for the cost of land, nor for work on residential housing. Although relief is only available over a long period of time it can provide a valuable benefit where significant capital works have been undertaken on a building.

Research and Development (R&D) relief

R&D relief is an additional tax relief available for companies that incur expenditure on scientific or technological research and development that is relevant to their trade. It is, however, only available for companies and not for unincorporated businesses. It also requires the company to be conducting taxable trading activity and so mutual traders and other companies conducting mostly non-taxable activities are unlikely to benefit. However it could benefit a non-profit company that does conduct commercial trading activities with third parties.

Qualifying R&D projects are those that seek an advance in the overall knowledge or capability in a particular field of science or technology. The project must be seeking an advance in knowledge that is publicly available or readily deductible by a competent professional in the field, and not just an advance in the company's own knowledge.

Under proposals announced at the Autumn Statement, from 1 April 2024 the two existing schemes will be merged, with an additional tax deduction available for qualifying expenditure of 20% (15% after deducting CT at 25%). Loss-making businesses may benefit from subsidy of up to 16.2%. An enhanced rate of relief is available for R&D intensive companies, that is, companies who spend more than 30% of their expenditure on qualifying R&D.

The administrative side of making a claim has also increased. HMRC now require full details of the project to be outlined on an Additional Information Form, submitted prior to submitting your CT return including the claim. An Advance Notification Form is also required to be submitted within six months of the year end for first time claimants and anyone who hasn't claimed within the last three years. In the past, R&D claims could be assessed and submitted up to 24 months after the period end.

Our specialist R&D team can assist with identifying possible R&D projects and maximising the benefits. If you would like to discuss how your company could benefit from R&D tax reliefs, please get in touch with your haysmacintyre account manager.

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Unleashing potential: The crucial shift from all-elected to blended boards in professional bodies

There is a long running discussion within professional membership bodies on the subject of board composition and governance relating to elected and appointed members. Many boards, historically, have been made up only of people elected from within the membership base itself.

The question is whether this all-elected structure is appropriate in meeting the needs of a modern professional body and its members. With a greater focus on the tangible benefits that organisations can derive from greater diversity, an all-elected board seems to be anathema and at odds with progressive and inclusive approaches. How is it possible to achieve any meaningful degree of diversity on a board when all of the members on it are elected from a relatively small pool? This does not just apply to demographic diversity, but also diversity in background, thought and experience. A room full of people from one profession will have exceptional subject knowledge in their professional field of expertise but may well lack broader experience and knowledge essential to develop strategy and provide valuable guidance, input, and constructive challenge to executive teams. Appointed members, being selected based on their skills and expertise rather than popularity within the membership, bring a unique and often underrepresented perspective to the board. This diversity is essential for ensuring that the professional body can effectively serve a wide range of stakeholders and adapt to an ever-changing professional landscape.

In my experience, as an executive search consultant and business owner, organisations rightly and very actively seek for my firm to scour the marketplace to find the very best choice of candidates possible to take on their most senior executive positions, either as Chief Executive or a member of the senior leadership team. These individuals will be impressive, not just for their leadership capabilities and strategic skills but also because of their wider business experience, as well-rounded individuals with high levels of emotional intelligence and a collaborative approach to the workplace. Yet the same organisations who are recruiting their Chief Executive may well be compromised when structuring their own boards by outdated precedents which dictate terms which limit the ability to bring the right people to their boards.

Unsurprisingly, executive teams can find themselves underwhelmed by the all-elected governing body to which they report, frustrated that there is a demonstrable lack of breadth in business acumen, financial awareness, digital savvy or general awareness of the changing environment. At worst, this can lead to the development of a dysfunctional relationship and mistrust between the board and the executive team.

It seems clear that professional bodies can significantly benefit from a blended board comprised of both elected and appointed non-executive members. While elected members bring deep sector knowledge and represent the voice of the membership, appointed members offer specific skills, new perspectives, and the ability to challenge conventional thinking, fostering diversity and enhancing the quality of outcomes.

One major advantage of appointing non-executive members is the opportunity to introduce specialised skills. Professional bodies often require expertise in areas such as transformation, digitisation, finance, legal matters, technology, strategic planning or international development. Appointing individuals with these skills ensures that the board has a well-rounded set of competencies to address complex challenges. For example, a legal professional with experience in regulatory compliance can contribute valuable insights in ensuring the professional body adheres to evolving legal frameworks.

Appointed members also introduce fresh perspectives and a willingness to challenge existing norms. This diversity of thought is crucial for preventing groupthink and avoiding the creation of echo chambers within the board. A board comprised solely of elected members may inadvertently reinforce existing ideas, limiting innovation and hindering the ability to think outside the box. By including appointed members, professional bodies can inject a healthy dose of constructive dissent, fostering a culture of continuous improvement.

An increasing number of professional membership bodies have recognised the benefits of transitioning from exclusively elected boards to a more balanced composition. At The LSL Group, we now are asked on a regular basis to instigate a search to fill an appointed board position. In the majority of cases the brief is very precise and deliberate. The assignment will be to secure an individual with a specific set of experiences or knowledge which the board is currently lacking. Each of these Non Executive Director (NED) or Lay Member roles is crucial. There is often only a relatively small number of appointed positions, with the majority of the board members still being elected.

This means that each appointed role really counts in the added value it provides. Not only are we seeking specific skills or experiences in the appointed candidate but, just as important, the board has the ability to achieve greater demographic diversity in a way in which it is simply not possible when electing from within the membership, especially where that membership itself is unrepresentative of the population.

Recent examples of highly successful NED appointments that we have led include securing a digital expert for a leading professional body; a NED with deep experience of the Far East market to help introduce valuable understanding of the region to the board which had been missing previously; a senior finance professional to support a board which had no functional finance expertise; a Chair of the Audit and Risk Committee with previous experience outside their sector, and many more. In every case the appointed candidate brought exceptional experience to the board that would not have been possible without making an external appointment.

In conclusion, a blended board of elected and appointed non-executive members should now become the norm for achieving optimal governance. Elected members bring deep sector knowledge and represent the interests of the membership, while appointed members contribute specialised skills, diverse perspectives, and a capacity for constructive challenge. The inclusion of appointed members not only enhances the quality of decision-making but also guards against the pitfalls of groupthink and ensures the professional body remains innovative, agile, current, relevant and adaptable. There is a growing number of professional bodies which can now demonstrate conclusively that embracing diversity in board composition leads to more effective and responsive governance in the ever-evolving professional landscape.

If you would like to recruit an appointed NED to your board or are just interested to explore this topic further with me, or your organisation is on the journey towards bringing your first appointed member to the board, please do get in touch.



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HMRC Employment status alert

Employment status has always proved to be an area of interest for HMRC and their latest campaign into the charity and not for profit sectors will include professional institutes and membership body organisations as part of their 'target audience'.

Over recent years there has been much written about off-payroll working arrangements, including the introduction of the off-payroll work legislation, which saw the responsibility for its implementation moving away from the worker to the engager. These changes took place in April 2017 for public sector entities and in April 2022 for the private sector.

However, in respect of the intermediaries legislation (commonly referred to as the IR35 legislation), the transition of responsibility from worker to engager did not go smoothly, with instances where engagers were taking a blanket approach and deducting PAYE and National Insurance regardless as to whether the legislation applied.

Further challenges included, for example:

- Is the organisation caught by the legislation?
- Who at the organisation was going to have overall responsibility for legislation?
- What policies and procedures needed to be put in place to ensure the legislation was being applied?

To recap, an organisation will fall within scope of the legislation where two of the three conditions are met:

- Turnover exceeds £10.2m
- Gross assets of £5.1m plus
- 50 plus employees

Organisations regularly engage individuals directly, on a self-employed basis, and it is the same 'tests' for both IR35 and employment status which need to be considered to help determine whether they can be paid 'gross' or PAYE, and if Class 1 National Insurance needs to be deducted.

Examples of the tests which need to be considered include, but are not limited to:

- Mutuality of obligation – Is the organisation obliged to provide work to the contractor/worker?
- Personal skills – Is the individual providing specialist skills which nobody else possess and do they have the right to provide a substitute (including the unfettered right of substitution)?
- Reality of the engagement – HMRC will typically look at what the contracts says and compare this with how the services are provided.

The amount of questions HMRC can raise during an employment status review can be more than one hundred, which can be time consuming for both the engager and the worker to deal with.

HMRC campaign letter

The current HMRC campaign is not limited to individuals who provide their services via an intermediary, such as a personal service company. It will look at any individual who is paid by an organisation and the payments made are not subject to payroll deductions, such as income tax and National Insurance.

What are HMRC looking for?

Based on the campaign letters we have seen to date, HMRC are requesting the following information:

- A full list of all sub-contractors, workers and individuals who were engaged during the 2022/23 tax year
- Details of payments made to those individuals, subcontractors and workers including details of the services provided
- Provision of sample invoices
- Copy of any internal guidance and/or manuals
- Sample contracts and time records

The final question concerns a description of the procedures in place for determining the employment status of the contractors/workers.

In respect of the final question, HMRC want to understand what steps organisations are taking to ensure they have fully considered the tax treatment on the payments they make to any 'off-payroll' workers they may engage.

This will include, for example:

- What testing of the contractual arrangements is being carried out?
- Is the organisation making use of HMRC's Check Employment Status for Tax (CEST) tool, or any other similar software as part of its verification processes?
- Where there is any disagreement over the tax treatment on payments made to a worker, how is that dispute resolved?
- How often does the organisation review the employment status of its workers?

If an organisation receives a campaign letter, we recommend that a review of your arrangement and/or the proposed response is conducted. Employment status is a complex area, especially as there is no statutory definition as to who is employed or self employed, or inside/outside the scope of the IR35 legislation.

Pension Salary Exchange

A video of Nick outlining some of the benefits for employers entering into a pension salary sacrifice can be found [here](#).

If you have any questions, please contact Nick Bustin, Employment Tax Director.



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Upcoming events programme

We have one of the largest charity and not for profit teams in the country: we act for over 800 clients, accounting for approximately 30% of our annual turnover. Our team of specialists host topical seminar updates and speak at other organisations' events presenting the latest developments within the not for profit sector.

Trustee Training: Introduction to Charity Finance and Reporting

20 February 2024

13:30 – 17:00

Online

PARN - Finance SIG

27 February 2024

015:30 – 17:30

Online

EPOC: An evening of wine tasting and networking

07 March 2024

17:00 – 20:30

haysmacintyre, 10 Queen St Pl, London, EC 4R1 AG

Trustee Training: Charity Law Update

26 March 2024

13:30 – 15:30

Online

NFP VAT and Tax Exchange

18 April 2024

Online

Memcom Conference

25 April 2024

08:00 – 20:00

Etc Venues, 155 Bishopsgate, London, EC2M 3YD

To book your place at any of our events, please visit haysmacintyre.com/events

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An evening of wine tasting and networking

Epoch Consulting, haysmacintyre and the LSL Group invite you to join us for an evening of wine tasting with expert sommelier Paul Bolt.

Hosted by Kathryn Burton and Tom Wilson, Partners at haysmacintyre, our theme for the evening will be exploring wines of the world whilst considering the macro economic environment and global implications for the sector.

You can expect to enjoy:

- A variety of wines from both the new and old worlds
- Storytelling of wine with Paul Bolt, sommelier
- Expert opinions from Max King, Head of Epoch Consulting, and David Sneesby, CEO at LSL Group
- Networking with the sector

This is an invite only event and spaces are limited. We hope to see you there. To book your place please visit haysmacintyre.com/events/epoch-and-haysmacintyre-wine-tasting/

Date: 7 March 2024

Time: 17:00 - 20.30

Location: haysmacintyre, 10 Queen Street Place, London, City of, EC4R 1 AG, United Kingdom

Cost: Free

For further information please contact events@haysmacintyre.com

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If you need guidance on any audit and accounting, financial reporting, statutory obligations, funding, employment tax or direct tax matter you can contact any member of our PIMBs team using the details below.

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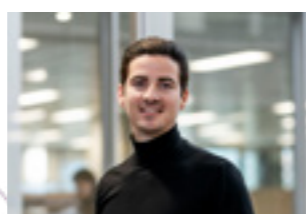
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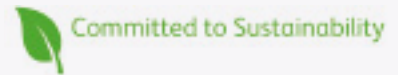
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Winner: Large Firm
of the Year 2023



An privateclient
top accountancy firm 2023



Top 10 auditor to quoted companies
in Adviser Ranking Listing