



## From the editor

Welcome to the Winter 2022 edition of our briefing for Professional Institutes and Membership Bodies (PIMBs).

With a new year upon us, and hopes for continued easing of restrictions from the COVID-19 pandemic, it's important to contemplate the upcoming challenges and opportunities faced by the PIMBs sector.

Emma Gabe reflects on the development of technology and its utilisation within the finance department, praising the benefits but pondering on whether it is indeed the answer to problems faced or if overlooking its limitation may be perilous.

Researchers at the Professional Associations Research Network (PARN) share their observations of what the trends in data is indicating for the PIMBs sector, following the financial shock in March 2020, and consideration to any long-lasting impact.

The world's workforce has necessarily adapted to the pandemic, and many more employees have taken up remote working. Nick Bustin sets out the tax considerations that the employer should be aware of if a UK employee's home office is located abroad.

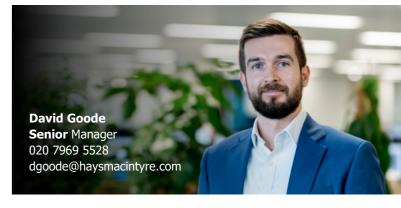
The Government has introduced a new levy to help support social care, impacting all PIMBs organisations with employees, and our employment tax team provides details and considerations around this.

Conversely, HMRC have backtracked on their brief around VAT on dilapidations, and Stephen Patey sets out the current position and considerations for PIMBs entities.

The PIMBs sector has seen a number of organisations focus on internationalisation and growth of overseas impact and income. Organisations with overseas investments, or other sources of income arising overseas, may suffer withholding taxes on their income. Jamie Whale summarises the main scenarios that organisations are likely to face, and when advice needs to be taken.

My thanks to those who contributed articles and insights to this publication. Please do not hesitate to contact any of our authors with any queries.

We look forward to seeing you, in person or virtually, at upcoming events and seminars in 2022. If you have any questions or would like to discuss any of the topics raised in this edition, please feel free to get in touch using the contact details below.



# Technology: is it the answer to our problems?

A CEO exclaims in exasperation, "Why is it so difficult to produce simple and accurate reports?"

The FD responds, "If only finance had the budget for a new accounting system, all the reports would be automatic, saving us so much time."

#### Is technology essential to modern-day working?

If you asked anyone 30 years ago what our working lives would look like now, nobody could have predicted the transformation. Emails instead of letters, databases instead of physical paper records, digital signatures – the list goes on. Since March 2020, technology has been more essential than ever to enable us to work from home. Storing data electronically, particularly via the cloud, has facilitated remote working during these unprecedented times, and platforms such as Microsoft Teams and Zoom have also enabled communication through the ability to screen share. There is no doubt that this technology is important and has improved efficiency, accuracy, and access to information.

It is important that this shift towards the use of more technology is reflected within organisations. From the sample conversation above, investing budget into software and systems can improve accounting functions, as well as save organisations time. Having good technology in the finance team can provide:

- Integrated technology with the rest of the organisation eg membership database or a customer relationship management (CRM) system
- Bespoke streamlined reporting that can be generated in the same format each month
- Automatic reconciliation functions of the sales ledger, purchase ledger, and bank reconciliations
- The ability to make bulk-payments to many suppliers and employees via BACS payment
- Budget, forecast, and re-forecast data so that meaningful reports can be generated
- Purchase order systems integrated with the accounting system, meaning invoices are held electronically and authorisation is no longer paper based

The functions above are essential to consider for any organisation embarking upon acquiring a new accounting system. There is no doubt that having good technology streamlines processing and helps to mitigate the risk of human error through data inputs, but is this technology always the answer?

#### Limitations of technology

An auditor tells the CFO, "We have noted that the bank reconciliations do not reconcile."

The CFO responds, "That is impossible. Our technology reconciles the bank statements to the accounting system automatically. So, if it doesn't reconcile, it is a system issue."

The auditor then asks, "But isn't there a monthly check that the balance sheet is reconciled to underlying records?"

CFO responds, "We have invested in our accounting system with the functionality to do that for us so why would we need to check it?"

Technology alone is not always the answer. It has the ability to automate and match most transactions, but in this bank reconciliation situation there will be:

- One-off single payments that are made outside the BACS runs for one-off purchases or urgent one-off payments
- Income received that is not identified by the accounting system at first and requires enquiry from the finance team to other areas of the organisation to identify and allocate the income to the correct category
- Minor discrepancies between the CRM or membership database and the bank receipts, meaning that the accounting records for income and receipts are not automatically reconciled

Without including an additional human sense check, the bank statements and the accounting records will not necessarily reconcile through the automated process alone. This could go unnoticed until the year-end audit comes around, but why does this matter if it will be done eventually anyways?

Having unreconciled areas of the accounting system means that the data, including income, expenditure, and balance sheet records, may not be sufficiently accurate. This could mean that important decisions by management or the Board are made from an incorrect standpoint and could have an adverse impact on the organisation. By implementing regular supervisory controls, such as monthly checks of all key material balances, the Board will have reliable information to make key decisions.

There is also a danger in becoming over reliant on technology and automation. If the finance team are not involved in reconciling the figures and posting the underlying transactions, then the base knowledge of the business activity could be lost. If the finances needed to be interrogated, or if the technology fails, would the finance team be able to understand, manually input, and reconcile the transactions?

#### So, is technology the answer to our problems?

Whilst technology can assist organisations to maximise efficiency and streamline processes, saving time and people costs and undoubtedly reducing the risk of human error, it does have its own limitations. Human sense checks are essential to confirm the continued accuracy and efficiency of the technology so that financial data remains complete and reconciles to the underlying records.

For PIMBs organisations, it is this important combination of maintaining sufficient human input to compliment the investment in modern technology which can save a lot of time and prevent human error in the long run. This ensures that management information is robust and that decision making is suitably supported.

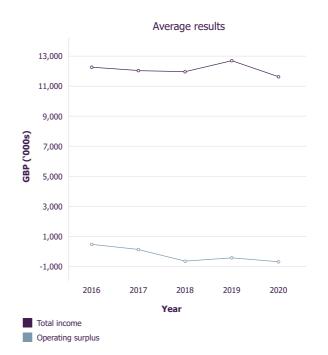


# Financial consequences of the pandemic - early indications

Early indications are that the pandemic had brought about a shock to professional body finances in the second quarter of 2020. The shock was muted by government support but most significantly it acted as a stimulus for virtualisation of operations leading to a substantial and a likely continuing recovery from the initial shock. It has also oriented the distribution of income sources back to greater reliance on subscription fees with reduced income from event attendance and education and training.

These conclusions follow from an analysis of a subset of professional body annual reports included in the 12th annual PARN/haysmacintyre Financial Benchmarking report for 2019/2020, published in November 2021. Of the 504 annual reports included, we based this analysis on the 18 which commented on the pandemic, and have financial year ends at the end of September and October. It is an interesting feature of the professional body sector to have financial year ends in different months, and 29% had year ends neither at the traditional end of December nor end of March. The 18 analysed were more representative of middle-sized professional bodies, with around half with 5,000-20,000 members, compared to a third for the whole sector. They were also more concentrated in the medical and legal subsectors which represented 50% of the sample but only 28% of all professional bodies in the UK.

We provide evidence to support these early indications with charts comparing the five years up to 2019/20 on various financial measures.

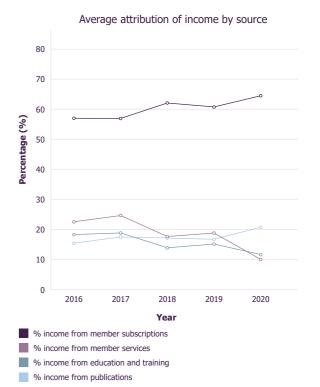


There was a small fall in total income of 8% on average, with 13 of the 18 showing a decrease but five an increase. This was accompanied by a rise in deficit for the 18 professional bodies, though more evenly nine improved surplus or deficit, and for nine it deteriorated.

Member subscription income increased as a percent of total income by 6%, on average, with an increase for 13 professional bodies and a decrease for five. This in part reflected a small increase in the number of members of 1% for the 13 that reported member numbers. However, it also reflected substantial falls in income from certain other sources.

Attribution of income to particular sources other than member subscriptions was not reported by all 18 professional bodies and reporting of particular sources varied. 10 of the 11 which reported income from member services (events and member network activities) reported a decline. Overall, the percentage of income from this source almost halved. This included the worldwide cancellation of face-to-face conferences, seminars, and meetings. Due to virtualisation most of these gatherings still took place online, and in some cases the number of events and meetings rose, but it was not possible to charge as much for virtual events, and in many cases, they were offered for free.

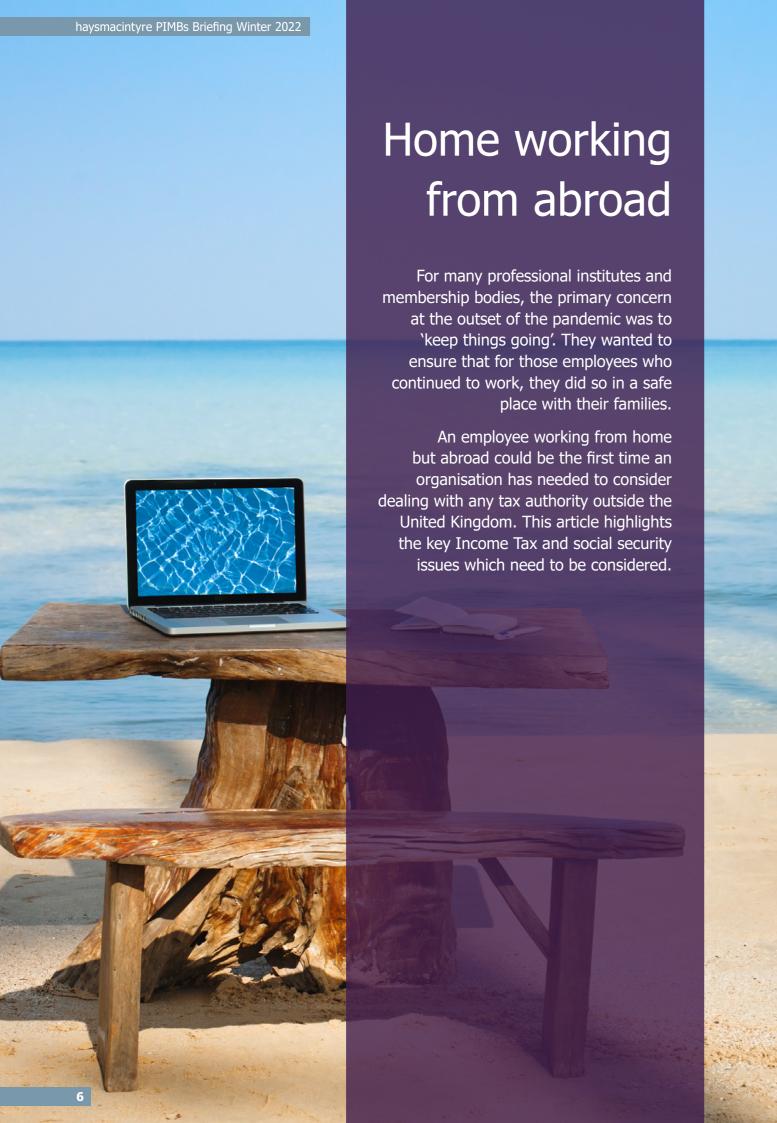
There was also a serious decline on average in income from education and training services including CPD. Of the 11 which reported this source, it fell for eight, although it increased for three of them. However, the percentage of income from publications rose.



#### Will these early indications prove long-lasting?

The step up in virtualisation will undoubtedly be maintained and likely be further enhanced. Some mix with face-to-face events, which has already resumed since these annual reports were analysed, is likely to become the norm. However with the risk of new variants, professional bodies may be driven back to more complete virtual mode, though hopefully only for a short time. We suspect the long-term trend in diversification of income sources away from reliance on member subscriptions will be resumed with a return of income from events, education, and training.





#### What are the employer's obligations?

Employers need to be aware of their responsibilities both in the UK and the country where the employee is based, even though the employee may have returned to their home country as a matter of personal choice. The employer will need to consider:

- What ongoing Income Tax and National Insurance (NI) obligations will continue to be required?
- What is the employee's residence position?
- What are the employer's obligations in the country where the employee has relocated?
- Who within the organisation will ensure all compliance obligations will be fulfilled?
- What actions is the employee expected to undertake?

The Income Tax and social security ramifications of an employee working in another jurisdiction are far more complicated owing to the need to consider both UK domestic and host country legislation. The challenge many organisations need to address first concerns those employees who left the UK without any guidance being put in place by the employer.

Employers will need to establish where employees will be working and whether Income Tax and/or social security liabilities will arise in the host country.

### Where will the employee be liable to pay Income Tax?

Where an employee has relocated to a country with whom the UK has negotiated a double tax treaty, you will need to establish which country holds the primary taxing rights on their remuneration. Based on the Organisation for Economic Co-operation and Development (OECD) model tax treaty, the individual's income from employment will be subject to Income Tax of the other contracting state (the country where the employee was based), where the following is present:

- a. The recipient is present in the other state for a period or periods exceeding in the aggregate 183 days in any 12-month period commencing or ending in the fiscal year concerned
- b. The remuneration is paid by, or on behalf of, an employer who is not a resident of the other state
- c. The remuneration is not borne by a permanent establishment which the employer has in the other state

Looking at the past 18 months, it is highly likely that many employees will fall within (a) and (b). Consequently, consideration needs to be given to the steps which need to be taken to ensure compliance in the host country.

Where employers are going to incorporate any home working from abroad as part of a move towards hybrid working arrangements, consideration will need to be given to the ongoing Income Tax and social security obligations in the host country. Where the employer does not have a permanent establishment in the host country, the employee will be responsible for registering to file a tax return in the host country and for paying Income Tax due on their remuneration. However, local advice should always be obtained to see if there is a requirement to operate a payroll.

#### **Social security**

The basic rule is that social security contributions are due where the employee works. There are certain 'easements' depending upon whether the employee is working in an:

- EU/EEA country
- Reciprocal agreement country<sup>1</sup>

However, consideration also needs to be given to employees who are working in countries not covered by either of the above.

#### Social security in EU/EEA countries

The protocol on social security co-ordination was included in the EU–UK Trade and Cooperation Agreement. The agreement largely replicated the EU regulations which were in place prior to Brexit. Individuals will only be liable to social security contributions in one country, generally where the employee carries out their activities.

Whilst it is possible to maintain payment of UK NI contributions, consideration needs to be given as to whether the employee can be regarded as a posted worker. Currently, there has been no formal policy decision published by either the UK or EU government; however it has been accepted that where (owing to the pandemic) an employee was working in another EU country, the employee will continue to pay contributions in their home country. On 17 June 2021, the Administrative Commission for the Coordination of Social Security Systems extended this arrangement until 31 December 2021 for employees working within the EU, the EEA, and Switzerland. HMRC has followed suit and confirmed this in their August bulletin.

Post 31 December 2021, it will only be possible to obtain an A1 certificate where the worker is posted (often referred to as a place worker) to work abroad, albeit on a temporary basis. Unless it is possible to satisfactorily demonstrate an employee is a posted worker (or a multistate worker), then social security liabilities will be due in the country where the employee is working.

<sup>&</sup>lt;sup>1</sup> Barbados, Bermuda, Canada, Chile, Iceland, Isle of Man, Israel, Jamaica, Japan, Jersey & Guernsey, Mauritius, New Zealand, Norway, Philippines, Republics of former Yugoslavia, South Korea, Switzerland, Turkey, and USA.

Where there is a liability to pay social security contributions in an EU country, there will usually be a need for the employer to register with the social security authorities and operate a payroll in order to pay those contributions across to the host country authority. This will add additional cost for the employer, not only in terms of the higher level of social security contributions due but also the need to operate a payroll in another country. Some jurisdictions, however, will allow the employee themselves to register, report, and facilitate the payment of employee and employer social security contributions.

#### Reciprocal agreement countries

The general rule under these agreements is that an employee is only subject to social security contributions in one jurisdiction, and it is generally where the employee undertakes their activities. Most agreements will allow for posted workers to remain subject to NI contributions while working overseas for the period of time specified in the agreement. Periods of extension are also available, typically upon the agreement of both relevant authorities.

Many agreements contain a provision for 'exceptional circumstances' whereby HMRC and the overseas jurisdiction can agree where an employee is subject to social security contributions based on their individual circumstances. The provision could possibly be utilised where there is uncertainty as to whether the employee has been posted overseas.

#### Rest of the World countries

The position can be further complicated for those employees who are working in countries where the UK does not have any social security agreements in place, commonly known as the 'Rest of the World' countries. No easements are available with these countries and depending upon how long the employee is planning on working abroad could dictate that social security will be due in that country. Under UK domestic regulations, an employee and their employer will remain subject to Class 1 NI contributions in the UK for a period of 52 weeks on earnings paid from the start of the contributions week when they left the UK where:

- The employee was resident in the UK immediately before going overseas
- They remain ordinarily resident in the UK for social security purposes while working overseas
- Their employer has a place of business in the UK

All three conditions must be met in order for the NI liability to continue for the 52-week period. The NI is payable in addition to any social security contributions payable under the overseas location's domestic social security legislation.

Furthermore, the employer may need to consider whether additional benefits need to be provided to ensure the employee has access to medical care.

#### **Permanent establishment**

Another area of concern, which will potentially affect whether a liability to Income Tax arises in the host country, is whether through the presence of an employee (especially a senior employee) a permanent establishment of the UK business could be created in the host country.

In April 2020 the OECD published guidance concerning the impact of COVID-19 on double tax treaties, including permanent establishment. The OECD guidance<sup>2</sup> stated that where a senior member of the management team had temporarily relocated to another country, then this will not create a permanent establishment. HMRC's own guidance was limited and only applicable for the short-term requirements of managing business through the immediate impact of the pandemic.

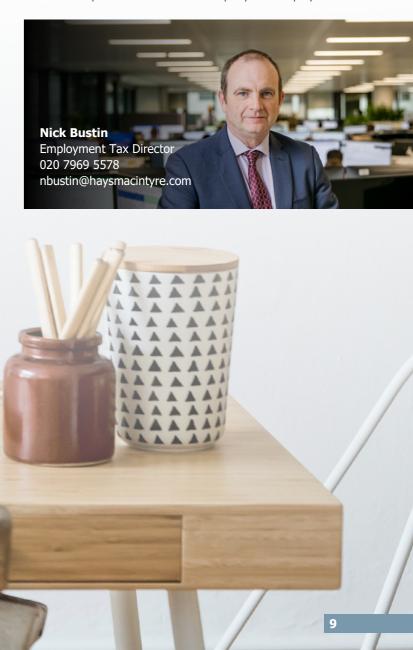
However, a certain degree of permanence may exist should the employee continue to work from their home abroad. This could mean overseas reporting and taxation obligations for the organisation.

#### Other points to consider

Alongside the Income Tax and social security issues, employers must also consider the following:

- What changes must be made to the employment contract?
- Does the employee have the right to work in the host country?
- What duty of care arrangements are in place for the employees' health and safety in the workplace?
- Where employees are working outside the UK for prolonged periods, could they acquire employment rights in the host country?
- What type of data security arrangements do employers need for employees working outside of the LIK?

Consideration will need to be given to the additional costs which are likely to arise where an employee is allowed to work outside of the UK, for example the difference in the host country's Income Tax and social security rates but also the compliance costs for the company and employee.



<sup>&</sup>lt;sup>2</sup> OECD updated guidance on tax treaties and the impact of the COVID-19 pandemic dated 21 January 2021



# Health and Social Care Levy and pension salary exchange

The Government announced the introduction, from 6 April 2022, of a standalone 1.25% Health and Social Care Levy which will apply to employers and employees. The following are the key financial implications:

- From April 2022, rates of employer and employee NI will increase by 1.25%
- From April 2023, NI rates will revert to the 2021/22 levels and be replaced by a dedicated levy
- The levy will not be charged in respect of apprentices under the age of 25
- Unlike NI, the levy will be paid by people over the pensionable age who are still working

The money raised via the levy will be ring-fenced for investment in health and social care.

Employers should consider the use of pension salary exchange which may reduce the impact of the levy and generate some NI savings also. PIMBs organisations could utilise funds from savings on their members, share savings with its employees (through additional employer pension contributions) or a combination of both. Considering the use of pension salary exchange ahead of 6 April 2022 will act as a timely reminder to encourage employees to think about planning for their future pension arrangements.

If you have any questions or require advice, please contact either Nick Bustin, Employment Tax Director, or Dinesh Pancholi, Senior Manager, using the contact details below.





# VAT on dilapidation payments

Back in 2020 HMRC issued a Revenue & Customs Brief which set out HMRC's view that, as a result of certain European Court cases certain payments which had previously been regarded as being outside the scope of VAT on the basis that they were payments of compensation or liquidated damages were, in fact, consideration for the original supply of goods or services to which they related.

This raised the possibility that HMRC would take the view that dilapidation payments were subject to VAT at the standard rate, where previously they were deemed to be outside the scope of VAT.

The original Brief had stated that HMRC would be looking at such payments retrospectively which would have resulted in organisations suffering VAT assessments, even though the payments had been treated in line with HMRC's previous policy. However, following several representations to HMRC, they withdrew this Brief and stated that the new policy would take effect from 1 February 2021 rather than being backdated. This was obviously positive in that it would prevent organisations suffering large assessments for historic payments, but it meant that many partially exempt PIMBs organisations who were unable to recover all of their VAT were looking at an irrecoverable VAT charge on any dilapidation payments made from 1 February 2021 onwards.

To date, there has been no further Brief issued and we now understand that HMRC have backtracked further on this and that draft guidance has been prepared stating that dilapidation payments will not be deemed to be further consideration for a supply of a lease, meaning that they will continue to be outside the scope of VAT.

It is hoped that this is the case, and that this guidance will be issued soon to bring an end to the uncertainty HMRC's pronouncements have caused.

We understand that many PIMBs organisations are assessing, or have already changed, their office or other premises arrangements in response to the current pandemic, including options that may incur dilapidations costs. We will of course update you as soon as further guidance is issued but in the meantime, please do not hesitate to contact Stephen Patey in our VAT department should you wish to discuss further.





# Withholding taxes for PIMBs organisations

PIMBs organisations with overseas investments, or other sources of income arising overseas, may suffer withholding taxes on their income. Jamie Whale summarises the main scenarios that organisations are likely to face, and when advice needs to be taken.

Like all UK companies, PIMBs organisations are taxable in the UK on their worldwide income. For the purpose of this article, we will refer to them as 'Companies' even though they may be an unincorporated association within the scope of Corporation Tax. Often, Companies can achieve a partial or complete exemption from Corporation Tax on its main activities because they do not amount to a trade, or any trading activity that is carried out is a mutual trading activity. However, investment income is not automatically exempt.

#### Types of taxable income in the UK

Companies with investment income may be taxable on the following sources:

- Interest income: bank interest, or interest on intragroup loans, which are taxable under the loan relationship rules
- Dividend income: dividends from UK investments are exempt from Corporation Tax. Dividends from oversea investments are also generally exempt from UK Corporation Tax due to the wide-ranging dividend exemptions now available. However, overseas dividends are taxable where the income arises in a tax haven.
- Capital gains on disposals of equities
- Other investment income may also be taxable eg royalty income where this arises due to making an investment. Although, it may be exempt if it is part of a wider exempt activity.

#### Overseas withholding taxes and relief available

Companies may be subject to overseas withholding taxes (WHT) on dividends, interest, royalties, and capital gains. Some jurisdictions can impose WHT on professional and technical services payments, however this is less common.

What type of relief can be obtained?

- Treaty relief: the company agrees to pay a lower WHT as per the treaty between the UK and the overseas jurisdiction, by agreement with the overseas authority. Alternatively, WHT imposed is then reclaimed by the company, via a claim to the overseas authority.
- 2. **Unilateral relief**: a company deducts the WHT from its UK tax liability (as calculated on the company's tax return). A full deduction is only available where the WHT rate is the minimum rate specified under the treaty. Note this relief can only relieve a current year liability and cannot create a taxable loss.
- 3. **Deduction relief**: the foreign tax incurred can be used to reduce the foreign income or capital gains that are chargeable in the UK. eg £100 income suffers 30% WHT, the company then treats the net of £70 as taxable income, instead of £100. This should always be available but is effectively only 19% relief for the tax deducted, therefore not the most efficient option.



#### **Examples**

Treaty relief

Company A has a royalty agreement with a company in Japan. WHT has been withheld at 20% on royalty payments made by the payer in Japan.

The UK-Japan double tax treaty allows for tax on royalty income imposed in Japan on a UK resident to be reduced to 0%.

Therefore, the company is entitled to full treaty relief. By making an application to the authority in Japan, normally accompanied by a certificate of residency from HMRC, the company should be entitled to a repayment and to receive future payments gross without WHT being deducted.

As the treaty rate is 0%, the company cannot obtain credit for this amount in its UK tax return.

Sometimes a claim for treaty relief is not cost effective or practical due to the complexity of overseas administration in certain jurisdictions and the need to overcome language barriers. If a claim was impractical, deduction relief can be claimed instead. This would mean only the net royalty (80% of the gross amount) needs to be brought into account and potentially taxed in the UK. Reclaiming overseas WHT in this situation is generally a time consuming and expensive process.

#### Unilateral relief

Company B has a royalty agreement with a company in China. WHT has been withheld at 10% on royalty payments by the payer in China.

The UK-China double tax treaty provides for WHT on royalty income imposed in China on a UK resident to be reduced to a minimum of 10%. Therefore, there is no benefit to an overseas claim.

If the company pays UK Corporation Tax on the royalty income (eg because it is part of taxable trading income), then unilateral relief is available and the WHT can be deducted from the UK Corporation Tax due. Full relief is available because the UK rate of 19% exceeds the Chinese rate of 10%. It is important to keep a record of the gross royalty income and the tax withheld to ensure correct disclosure on the Corporation Tax return.

If no tax is paid on income in the UK (eg because it is considered to be part of mutual trading income, or because it is investment income that is exempt in the UK anyway, such as dividend income) the company cannot offset the WHT or obtain any repayments or credits and must accept the 10% overseas WHT.

*Note*: if the WHT was applied at 15% instead, treaty relief or deduction relief would be available on the additional 5% withheld.

#### **Key points for PIMBs organisations**

- Dividend income cannot generally benefit from unilateral relief or deduction relief, as most dividends received are exempt from UK Corporation Tax. Treaty relief for the overseas WHT must be obtained where possible from the overseas authority.
- Interest income and capital gains are generally taxable in the UK and unilateral relief should be available to relieve the treaty rate, depending on the detail of the relevant treaty.
- Other investment income, such as royalty income, can obtain unilateral relief only where the income is already subject to UK tax. In other cases, treaty relief needs to be investigated.

#### How haysmacintyre can help your organisation

- We can help you minimise WHT suffered on overseas source income and maximise claims for repayment where necessary.
- We can provide advice in connection with the application of the overseas tax treaty to your circumstances. Each country and relevant income source may have differing tax treatments.
- Using our international network, we can obtain local advice regarding making a claim for treaty relief against past and future WHT claims, including details of when a refund claim may be 'out of time' under the other jurisdiction's tax law. Where the claim relates to investment income this will normally require assistance from you or your investment broker to assemble the necessary information.
- It is not always cost effective to make claims for smaller amounts, therefore, you should consider the amounts being withheld in light of the associated professional costs. However, once one-off advice is provided, an overseas agreement can provide effective relief for multiple years.



14

# Upcoming PIMBs conference and seminar programme

We have one of the largest charity and not for profit teams in the country: we act for over 800 clients, accounting for over 40% 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: Charity Law Update**

22 February 2022 13:30 - 17:00 Online

#### **Quarterly Charities Update**

8 March 2022 15:30 - 17:30 Online

#### memcom workstream: What every leader should know about Employment Tax

1 March 2022 16:00 - 17:30 Online

#### **PARN SIG Tax**

9 March 2022 TBC haysmacintyre

#### **Trustee Training: Introduction to Charity Finance** and Reporting

3 March 2022 13:30 - 17:00 Online

#### **Trustee Training: What Every Trustee Should Know**

30 March 2022 09:30 - 17:00 Cazenove Capital

To book your place at any of the events, please visit <a href="https://www.haysmacintyre.com/hm-events/">www.haysmacintyre.com/hm-events/</a>

#### **VAT and Tax Exchange**

4 April 2022 TBC Online

#### memcom workstream: Best practices in Policy and

**Procedures** 15 June 2022 16:00 - 17:30 Online

#### memcom workstream: What every leader should know about Financial Strategy

13 April 2022 16:00 - 17:30 Online

#### memcom workstream: Best practices in Systems and Software

6 July 2022 16:00 - 17:30 Online

#### memcom workstream: Best practices in Reporting

11 May 2022 16:00 - 17:30 Online

### PIMBs team

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 at the details below.

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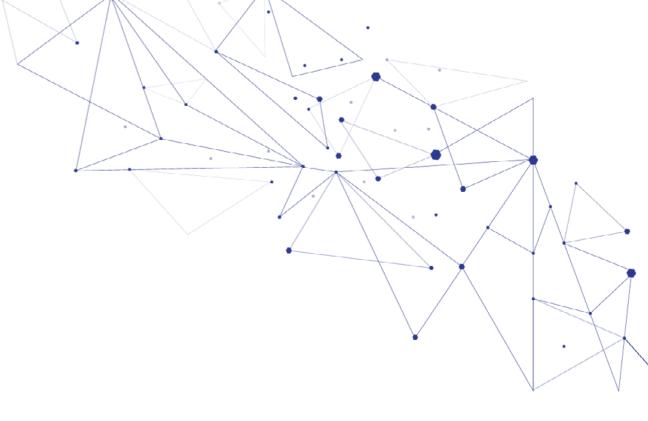
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18

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