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SCHOOLS BRIEFING

SPRING 2023

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From the editor

Welcome to the Spring 2023 edition of our briefing for independent schools, where we provide updates and insights on accounting, tax, reporting and governance for school bursars and governors.

Firstly, Ramzan Khan, Senior VAT Manager, considers the future of VAT exemptions on fees at independent schools if there is a change in Government at the next general election, as is increasingly being predicted.

With the ever changing landscape surrounding staff pension arrangements, and many schools making the switch from the Teacher's Pension Scheme to a defined contribution pension scheme, Nick Bustin, Employment Tax Director, has put together a step-by-step plan of action for schools to consider throughout the implementation of a pension salary exchange. Nick also lends his knowledge in an article discussing the consultation opened by the Government regarding the calculation of holiday pay for part-time workers.

Vikram Sandhu, Director, looks at the opportunities for independent schools to include metrics on environmental, social and governance (ESG) in their annual reports, what the key consideration are, and future hurdles to look out for.

We are grateful to Nicola Evans, Charities Counsel at BDB Pitmans LLP, who has contributed an article on charitable schools and permanent endowment, outlining the new powers to be brought into effect in Spring 2023, and how these might offer more flexibility for school governors in managing their resources.

Finally, Tim Bennet, Manager, outlines the changes that have been made by the Charity Commission to the questions for the annual return, which will apply for returns filed for accounting periods beginning on or after 1 January 2023.

I hope you enjoy this edition and find these articles of interest. Do feel free to let the authors, me or your regular contact know if you have any questions concerning the matters discussed.

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The future of fees: potential changes to VAT exemptions

With a general election expected within the next two years (prior to 24 January 2025 at the latest), it is an opportune time to look at the possible impact on independent schools that may result from a change in the Government.

It seems increasingly likely that in the next election, the incumbent Conservative Party, who have been in power since 2010, may lose and the main opposition party, Labour, are the most likely successors.

In the event that this should happen, and Labour achieve a majority in Parliament, one of Labour's long-standing pledges has been to change the current legislation and treatment of fees for independent schools from being exempt from VAT to being taxable – most likely subject to VAT at 20%.

Below, we consider some of the impacts that this will have on fee-charging independent schools.

VAT registration and anti-forestalling measures

Introduction of any new legislation by Labour which changes the treatment of school fees will have a substantial impact on independent schools, due to school fees forming a major income stream for independent schools.

Should school fees become taxable, many fee-paying schools, who have remained un-registered for VAT, will exceed the £85,000 VAT registration threshold. This will, therefore, require them to register.

Whilst it is possible that a Labour Government could introduce a reduced VAT rate of 5%, it seems more likely that it will be at the 20% rate. However, in either event, schools will be faced with a choice of whether they could absorb these fees or, more likely, pass the higher cost onto the parents, or some combination thereof. The higher school fees could potentially impact the number of applications, and have a knock-on effect on income and, perversely the number of bursaries that schools are able to offer.

However, if schools were to receive payment in advance for the school fees, it is almost certain that they would still be able to benefit from the VAT exemption, even if the exemption is subsequently removed once Labour is elected. If VAT is introduced on school fees at a future date, any tax points that have occurred prior to the implementation date (effective date that VAT applies) can be treated as being exempt from VAT and no VAT would need to be accounted for on this income. Any future payments or invoices issued after the implementation date would be subject to VAT.

Critically, the fees must be paid in advance and the funds must be available for use by the schools and not kept in an escrow account or similar. If parents have access to the monies, this does not necessarily form a tax point, as the monies can be said to be held on trust/as agent for them.

If the Government were to introduce legislation to remove the VAT exemption for school fees, it is almost certain that anti-forestalling provisions would be brought in. This would mean that the change from exemption to standard rating will be backdated from the date it was announced by the Government, instead of the date that the legislation receives Royal Assent. In other words, it would not be possible to benefit from the exemption in this period. However, such anti-forestalling provisions should not affect any payments made prior to any announcement, i.e. any payments made now because no official announcement has been made, and certainly no draft legislation has been drafted by Government. An extension of anti-forestalling legislation prior to a date of an announcement of a change in law would be an unprecedented extension of retrospective legislation, and would be susceptible to litigation as being unlawful.

There is a question mark on whether any scheme actively marketed as a way of avoiding paying VAT could be argued by HMRC to be some form of tax avoidance, with the potential argument being that this arrangement is only being entered into for VAT avoidance purposes. However, we note that many schools already have fees paid in advance and it may be that some parents would prefer to pay annual fees in advance rather than term-time instalments.

Input tax recovery

In such a situation where school fees become taxable and schools subsequently become VAT-registered, there is one advantage in that the schools will now be able to recover a substantial part of the input VAT that they incur on their purchases.

Previously as the exempt school fees formed the main proportion of the income, the corresponding VAT incurred on the costs was not recoverable by the schools, as the VAT is only recoverable when the associated costs relate to taxable supplies. This meant that schools were unable to recover most, if not all, of the VAT that they incurred on their purchases. Schools with some taxable income would have to apply a partial exemption calculation based on income to the overhead and other operational costs, with recovery rates on their overhead costs, generally being 1% - 2%. However, this situation will now be reversed, and it will be some small comfort that schools will now be able to recover circa 98% - 99% of their overhead costs – although, of course, given that labour is the highest cost and does not bear VAT, this may only be a small comfort.

There may also be a retrospective aspect to VAT recovery for schools that have undertaken capital projects within the last ten years, where they were unable to recover all or most of the VAT under the Capital Goods Scheme (CGS).

Capital Goods Scheme

The Capital Goods Scheme (CGS) is an aspect of VAT accounting for VAT-registered schools that will become relevant for those looking to undertake capital projects in the future, but more pertinently for this article, it can also be used by schools to try and recover VAT that it had incurred on its past projects. This is even for schools that were previously not registered for VAT.

Capital expenditure on land and buildings is subject to the CGS when it exceeds £250,000 and VAT is incurred on the work.

The capital expenditure in question can cover:

- Purchases of land and buildings
- Construction of new buildings
- Alterations, extensions, and annexes to existing buildings
- Refurbishments of existing buildings

The CGS requires that the amount of VAT recovered is monitored over a ten year period, with adjustments required to be made each year to this amount if there is any change in the taxable usage of the building, compared with the first use. This is usually done in line with the partial exemption calculation, and each year the annual adjustment percentage is then used to calculate whether any changes require an adjustment under the CGS.

This adjustment period of ten years means that if the legislation does change, then any capital project finished within the last ten years – whether the school was previously VAT registered or not – can have the CGS applied. This would therefore give scope for some of the VAT that was incurred and previously written off to now be recovered via the CGS calculations.

For example, if a school incurred VAT on the construction of a theatre building in 2020, which it uses entirely for its own purposes of educating its pupils, it would not have been able to recover any of the VAT it incurred on the construction service as it related to 100% exempt use. However, if in 2025 the legislation changes and school fees become taxable, then the use of the theatre for its students will be deemed to be 100% taxable use. The school can therefore revisit the VAT it originally incurred and start to reclaim the VAT for the remaining five years of the CGS. In this example, for possibly half of the VAT that it originally incurred.

Paying VAT on school fees will substantially impact the pricing and take-up of school places, as well as place an extra administrative burden on schools. However, there is small silver lining in that this will also positively impact on the VAT incurred on operational costs and on capital projects and, as illustrated above, there are some VAT recoveries possible to mitigate the fall-out from the fees becoming taxable. VAT should continue to be an intrinsic part of any capital project planning at the outset.

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Pension Salary Exchange

The landscape concerning staff pension arrangements has been changing at a rapid pace, with many schools closing their doors on the Teacher's Pension Scheme and providing a defined contribution pension scheme in its place.

We are aware that for many this has been a painful, time-consuming process and the idea of looking at anything to do with a pension scheme is the last thing that many finance or HR departments wish to contemplate. However, the purpose of this article will hopefully make you reconsider.

A pension salary exchange is a legitimate method of providing a school's pension arrangements, and at the same time generating savings for both the employer and the employee. The savings are realised as the employee agrees to reduce their salary in exchange for the school paying the equivalent amount in pension contributions on their behalf.

We have been working with several clients, helping them to implement pension salary exchange arrangements. Set out within this article is an overview of the plan of action which needs to be considered.

Step 1 – Creating your action plan

Consideration will need to be given to the viability in setting up a pension salary exchange, with the following being key points to bear in mind:

- Who will be responsible for overseeing the implementation of the pension salary exchange?
- How many employees are currently participating in one of the school's pension schemes?
- Who is eligible to participate in the scheme?
- What are the potential National Insurance savings which can be generated?
- How best do you communicate it with your employees?
- How do you ensure employees are aware of the benefits and downsides of participating in a pension salary exchange?

It is our recommendation that somebody within the school manages the implementation of the pension salary exchange, having clear oversight throughout the process. Ideal candidates for the role are senior members of either the HR or Finance teams.

Step 2 – Staff participation

The more employees who take part in the pension salary exchange, the greater the number who will benefit from the savings which can be obtained – as will the school.

A common question asked is whether the school should invite employees to 'opt-in' to the scheme; or, alternatively, to transfer all 'eligible' employees into the scheme, giving them the opportunity to 'op-out' should they not wish to participate in the scheme. Both alternatives are viable and acceptable to HM Revenue & Customs. However, the 'opt-out' method does lend itself to a higher level of participation and potentially a lower level of administration post-implementation.

When you are considering whether there are any employees who should not take part, it will include those who are at or close to the National Minimum/Living Wage (NMW) hourly rates. Furthermore, it is important to ensure that employees who are earning a reasonable salary do not sacrifice too much of their income, which could take them below the NMW hourly rates.

Step 3 – Notifying employees

The school should notify all employees regarding the intention to introduce a salary pension exchange. The most common approach is to write to every employee, advising them about the school's intention to provide a pension salary sacrifice arrangement and you can provide:

- Details regarding the pension scheme you are proposing to use
- Why you are proposing the use of a pension salary exchange
- The advantages and disadvantages for entering into the scheme
- Provide illustrations to demonstrate the pre/post pension salary exchange position

It is also our experience that not all staff read the emails which are sent to them! To help with the communication process we recommend the use of:

- An all-employee briefing, for example on Teams or Zoom
- Department meetings
- An article in a staff newsletter

Furthermore, the use of an all-employee briefing helps to provide everyone with a consistent message and the opportunity for employees to ask questions. It also helps to create a 'model' approach for any subsequent department meetings.

Step 4 – Discuss with other key participants

Whilst the school and its employees will benefit from the arrangement, it is also important to consult with your pension scheme and payroll providers advising them that you are proposing to set up the pension salary exchange arrangement.

They will be familiar with how the arrangement works and will be able to help you with some of the logistics – for example, changes to:

- The wording on your employee payslips
- Reports to be shared with the payroll provider
- Ensuring the pension provider treats the payments it receives as employer only contributions

However, it is wise to give them plenty of notice about the changes you are going to introduce to the pension scheme.

You will also need to prepare the key documents to send to employees, including letters and/or emails which will help to vary the terms and conditions of employment, especially the amount an employee wishes to exchange in favour of employer funded pension contributions.

Step 5 - What are the key messages?

The following provides a summary of the topics which need to be conveyed to employees:

- Under a pension salary exchange, the employee agrees to a reduction of their salary by an amount equal to their pension contributions
- The school agrees to pay the employee pension contributions, which are added to the school's pension contributions as total employer only contributions
- As the employee's gross pay is reduced, both the school and the employee pay less National Insurance

It is not uncommon for the school to share all or part of their National Insurance savings with the employees in the form of additional pension contributions.

For the employee, they will receive further benefits in addition to the National Insurance savings which will include:

- Immediate tax relief, based on their marginal rate of tax owing to the reduction in the level of their taxable earnings
- This is particularly helpful for higher rate taxpayers who, where they participated in a defined contribution pension scheme, needed to claim higher rate tax relief via the Self-Assessment Tax Return
- Student loan repayments are calculated based on the lower post salary exchange earnings

However, as an employer it provides an opportunity to remind employees of the need to better prepare for their retirement.

Step 6 – Long-term participation

Schools will want to ensure the long-term participation into the pension salary exchange arrangement, so the employee needs to be made aware that they will have to participate for a minimum period of 12 months. However, there will need to be an annual renewal process enabling employees to either 'opt-out' of the arrangement, or vary the level of earnings they wish to exchange in favour of School-funded pension contributions. Consideration will also need to be put in place to consider any 'lifestyle' changes, which will enable the employee to stop participating in the arrangement on a temporary basis (typically a minimum period of 12 months).

Common examples of lifestyle changes include:

- Marriage or Civil partnership
- Birth of a child or key dates in the adoption of a child
- Changes of formal custody arrangements
- Redundancy or loss of job or change in work patterns of a partner or spouse
- A significant change in working hours
- Divorce, legal separation, or dissolution of a civil partnership

The use of prescriptive lifestyle changes is to prevent employees from dipping in and out of the arrangement.

There are downsides which employees need to be made aware about, which include the following:

- The pension salary exchange must not bring an employee's earnings below the National Living/Minimum Wage limits
- Lower life cover is often calculated as a multiple of salary and the arrangement will make the salary figure lower
- Currently not beneficial to employees over pensionable age
- Potential impact on state related benefits
- Salary will vary the employee's terms and conditions of employment

Many schools will share some, if not all of their National Insurance savings with the employees in the form of additional pension contributions. Some schools are taking the opportunity to use some of the savings to:

- Help provide a staff award scheme
- Fund other benefits
- Apply them against other staffing costs

The consensus is that the benefits of entering a pension salary exchange are seen as out-weighing downsides, with employees seeing a small increase in their net income. It will help schools to make their staff budget stretch that bit further.

Step 7 – Post implementation

As with many projects a lot of work is carried out leading up to its implementation. However, it is important for a successful implementation of the pension salary exchange to consider the following:

1. Obtain staff feedback, especially around how the school explained the arrangement
2. Ensure all new employees joining the school receive the same information
3. Continue to promote the arrangement during the year, especially when employees are asked to review their participation and possibly increase the level of salary they wish to forgo in favour of additional pension contributions

Where the school has retained some of its National Insurance savings to help fund a staff award scheme, do not forget to put a scheme in place. It can be a simple arrangement – for example, providing gift vouchers where an employee has done a good job.

The school can meet the income tax and National Insurance liabilities due on the gift via a PAYE settlement agreement.

Case study

A school had closed participation into the Teacher's Pension Scheme and wanted to establish a pension salary exchange arrangement for all its employees.

We discussed with the school what their key-objectives were, following which an action plan was created. We provided the staff presentation, together with a Frequently Asked Questions document, to help answer questions which employees may ask during the implementation period.

We helped the school with the key documents needed to ensure an effective pension salary exchange was implemented, together with illustrations to help the employees understand the implications entering the arrangement meant to them.

We provided support to the team at the school who were responsible for the arrangement, and we continue to be available to them post-implementation.

The introduction of the pension salary exchange has helped the school to engage with all its employees regarding their pension savings. It has not only provided greater awareness for the employees about the importance of looking to their future retirement, but they felt valued as the school shared part of their National Insurance savings in the form of enhanced pension contributions.

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Environmental, Social and Governance Reporting for Independent Schools

Defining Environmental, Social and Governance
Although Environmental, Social and Goverance (ESG) is a growing concern and has become an increasingly important focus for many schools, the exact definition of the term remains relatively unclear. For many, it can be helpful to consider what each of the letters in this acronym mean.

- Environmental: Narrative around the environmental aspect – which has become associated with climate change, 'net zero' carbon emissions, and the energy transition could arguably be broadened to include wider social and physical aspects of environment, aspects which relate to dignity and wellbeing, or biodiversity and conservation
- Social: Social encompasses ethical behaviour and practices towards staff and pupils and the wider contribution to the sustainability of the socio-economic framework, including services or activities beneficial to human health and well-being
- Governance: Governance encompasses control and direction with a focus on the way a school sets out to address risks and opportunities; arguably this aspect also extends to the culture and the values held in considering and tackling its own sustainability and its impact as part of wider society.

ESG as an opportunity for independent schools
ESG reporting is an opportunity to tell a school's story about how it plays its part in the movement for a sustainable future. This could be by way of the installation of solar panels, locally sourced food and encouraging pupils to use school transport.

How does the work undertaken by the school benefit the environment and society? Meaningful, authentic ESG reporting can be moulded around each charity's ethos and values. The other spectrum of ESG has been the initiatives driven by the passions of pupils and staff alike to create eco-initiatives and lead on new policies. Reporting on ESG, rather than being a 'tick-box' exercise, could be an opportunity to evaluate what more can be done, although some highly established and historic schools have the added complication of restrictions to listed buildings.

While it may initially seem like a daunting prospect, addressing questions around the benefit of the work undertaken by your school will help with reporting on ESG.

Increasing public benefit
Another consideration schools should remember in ESG reporting is the work they do regarding public benefit reporting. In England and Wales, trustees/governors must confirm that they have applied the Charity Commission's guidance on public benefit. Public benefit is seen to be part of the 'social' aspect of ESG, and as a result, can be incorporated into reporting on ESG. When thinking about how to include the 'governance' aspect within reporting, schools follow the Charities Statement of Recommended Practice (SORP), which provides guidance to those preparing charity accounts.

While the SORP does not expressly consider ESG reporting, aspects of its existing requirements do coincide with elements of ESG, notably reporting on governance, risk, and impact. Similarly, the Charity Governance Code (2020), which sets out seven principles for effective governance, encourages elements of ESG. In particular, principle one (organisational purpose) and principle six (equality, diversity and inclusion) cover ground, which is associated with ESG, and could feature in reporting.

How can schools report on ESG?
As we build on learnings from COP26, there has been a noticeable drive towards greener activity, in turn meaning ESG has climbed up the agenda. Currently, there is no watchdog or regulator offering support for organisations adapting their practices to become more sustainable, making it difficult for many schools to see how they can implement ESG reporting in practice, in a meaningful way.

The Charity Commission has previously engaged with ESG reporting and the guidance is typically supportive of sustainability being incorporated into the school's approach, provided it aligns, or is complementary to, the school's overall objectives. The two are also linked, with ethical considerations having a positive effect on public trust. At present, there is much creative freedom in how ESG is reported, and it can be done under a framework, as a blended approach under different frameworks, or take a different route entirely. A revised version of the SORP is set to be implemented from 1 January 2025. The SORP Committee have identified sustainability reporting as a topic for discussion as part of their discussions.

Further hurdles
While there are lessons to be learned from current corporate reporting, they are by no means always best practice. More weight needs to be placed on the Social and Governance aspects of ESG, rather than the focus on Environmental that is typically front-of-mind, particularly for independent schools. The nature of many schools means that ESG can be inherent, but consideration still needs to be given to issues such as employment and safeguarding that can create a greater challenge.

As well as the resourcing issue, ESG reporting might create a challenge of who takes responsibility for collecting the information, if reporting lies within the Annual Report – finance teams could already be struggling for capacity, so schools may need to consider which system would work best for them.

Looking forward
There are three options available to schools as we look ahead:

1. Do something new
2. Imitate existing reporting
3. Let sleeping dogs lie

However, keeping an eye on future plans and the impact on the wider community is key and must be central, particularly in the current economic and political environment.

Importantly, we need to stress that schools are already likely doing more than they think and it is a matter of teasing out the relevant aspects for reporting, rather than trying to reinvent the wheel. The way this is communicated, whether it is through websites or annual reports, is also an important consideration.

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Charitable schools and permanent endowment – new powers in Spring 2023

New powers under the Charities Act 2022 (the Act) are due to be brought into effect in Spring 2023. The powers will be relevant for any charitable school which has permanent endowment (as defined under the Act – see below). In particular, they could offer more flexibility for school governors in managing their resources, for example to fund bursaries.

A charity with permanent endowment already has statutory power to release restrictions on spending capital, provided the charity trustees are satisfied that the purposes of the permanent endowment fund could be carried out more effectively if the capital (or portion to be released) could be expended, subject to Charity Commission oversight depending upon the origin, income and size of the fund.

That power will continue to exist when the new provisions are brought into force, although with some tweaks. In particular, the conditions for Charity Commission oversight will be simplified to a test of fund value. This is likely to mean that some resolutions not currently subject to Commission oversight will become so. Charities should be aware of these changes so that they are clear on which rules will apply and can act, and comply, accordingly.

In addition, a new power to borrow from permanent endowment will be introduced. Some charities may already have a power to borrow from permanent endowment, either in their constitutions or by Charity Commission order. Subject to the terms of their constitutions/order, the new power will be available alongside any such power (although it can be excluded or restricted by a charity's constitution).

The new power will enable the governors of a charitable school to borrow a 'permitted amount' from a permanent endowment fund, subject to repayment within 20 years of draw-down. The permitted amount is calculated so that no more that 25% of the available capital value of the fund (at time of borrowing) can be borrowed.

The power is available where the charity trustees are satisfied that it is expedient for the amount to be borrowed in the light of the purposes of the permanent endowment fund and the purposes of the charity. The charity trustees also have to be satisfied that arrangements are in place for the amount to be repaid within the 20 years. There is no requirement to inform the Charity Commission of use of the power to borrow, but trustees will be expected to account for their compliance with the repayment plan and, in the event that they consider they will not be able to repay the borrowing within the 20 year period, they must apply to the Commission for directions on how to proceed. While the obligation to repay is to recoup the capital borrowed, the provisions also empower the charity trustees to add an additional amount for capital appreciation where they consider it appropriate to do so.

It should be noted that the test for borrowing from permanent endowment is different from the test for releasing restrictions on spending the capital. The borrowing power allows a more expansive view, with a test of expedience taking into account both the purposes of the fund and the purposes of the charity. The borrowing power could, therefore, be useful where, say, school governors wished to fund a bursaries programme which might not fall wholly within the purposes of the endowment fund. In such a case, the school governors may not be able to satisfy the test for releasing spending restrictions on the capital of the fund (for which they would need to be satisfied that it would carry out the purposes of the fund more effectively), but they may be satisfied that it was expedient in the light of the purposes of both the fund and the charity.

Where governors make use of the new borrowing power, they can, where appropriate, still make use of the power to release capital restrictions – the new powers include provision to govern how the powers interact. Similarly, if they have already borrowed, they can borrow more subsequently, provided they are within the 'permitted amount'.

Once the new powers come into force, governors should, of course, consider carefully the detail of the provisions and the Charity Commission guidance which is expected to be published at the same time. They should also be aware that the powers will only apply to funds which fall within the definition of 'permanent endowment' in the Act, which will also change when these provisions are brought in. The new definition will be that:

> *for the purposes of the Act, property is "permanent endowment" if it is subject to a restriction on being expended which distinguishes between income and capital.*

The new definition is more in line with the traditional definition of permanent endowment, as a fund where only the income can be spent, but will (arguably) be slightly narrower than the current definition (which can, for example, include a fund restricted for narrower purposes).

The other aspect to watch out for in considering using these powers is that they apply in respect of a permanent endowment fund subject to the same trusts. If a school's permanent endowment comprises multiple smaller funds, each subject to different trusts, then the respective powers would be available but would have to be exercised separately in respect of each trust, applying (in the case of the power to borrow) the expediency test (and a repayment plan) in each case.

Charities where trustees have resolved to invest permanent endowment funds on a total return basis will also be able to use the power to borrow from the permanent endowment (for which the capital available for borrowing is calculated without including unapplied total return). In addition, a new power will be introduced permitting the trustees to use the permanent endowment to make social investments which they could not otherwise make (essentially where they are expecting a negative financial return). Charities interested in this option should look out for new regulations to be made by the Charity Commission governing the use of new power.

At present, we have no clearer indication of when the new powers will be brought into force than 'spring 2023'. However, schools which think they may wish to make use of the powers can start planning now, so as to be ready once the powers are in force.

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Holiday pay consultation

As many readers will be aware, the Government, via the former Department for Business, Energy and Industrial Strategy (BEIS) opened up a consultation on how holiday pay should be calculated for part-time workers, who are employed on a contract which can last for a full holiday year. This will typically include term-time workers within schools but also part-time workers – for example, those who are employed via a zero-hours contract.

The intention of the consultation is to address the anomalies which followed the Supreme Court decision in the Harpur Trust v Brazel case (published in July 2022) and left employers with a degree of uncertainty. Currently, there is a disparity in the holiday pay entitlement between part year workers and part-time workers, who have a similar work pattern. Generally speaking, and a point highlighted in the consultation document, part year workers are potentially entitled to more holiday pay and leave compared with colleagues who work on a part-time basis.

Under the proposals, which were the subject of the consultation, holiday will continue to be calculated using a 52-week reference period, with adjustments made where no work is undertaken. What was being proposed is for the calculations to be based on a 52-week period, including weeks where no work is done.

However, for part-time workers and workers working irregular hours, they have their annual leave entitlement calculated by reference to a fixed reference period, with a worker's holiday entitlement being based on the actual time worked. What is being proposed is a two-step method of calculation:

Step 1
Schools will be required to calculate the total number of hours worked in the previous holiday year (including non-working weeks)

Step 2
Multiply the total hours worked by 12.07% to arrive at the worker's total statutory holiday entitlement in hours for the current year.

Actions points
The consultation closed on 9 March 2023, and we expect draft legislation to be published later this year. Consequently, all schools should consider the potential impact the new legislation will present.

Schools should consider the following:

- Identify all part-time and part year workers they engage
- Review your current basis for calculating holiday pay to see if you are correctly applying the decision reached in the Harpur Trust v Brazel case
- Review cost forecasts on the basis the proposals will come into effect during the Autumn

We expect further guidance will be issued at the time the draft legislation is published and our further comments will also follow.

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Charity Commission revised annual return

Following a lengthy consultation, the Charity Commission (the Commission) released the updated list of questions for the annual return on 21 December 2022. The new questions will apply for returns filed in relation to accounting periods beginning on or after 1 January 2023. For most independent schools, this means that the new questions will come into effect for 2024 financial year-ends.

In an environment of ever-increasing regulation, it comes as no surprise that the number of questions has risen. The potential number of questions is now 49 – ten higher than the current level. Six of these questions will then be removed from subsequent annual returns (i.e. for financial year-ends in 2025). There are a significant number of new questions, although various questions have been simplified and some redundant questions have been removed altogether.

The Commission wishes to build a more detailed picture of the risks to individual charities, and the overall sector. Correspondingly, the more significant areas of change in the return likely to affect independent schools relate to structure and governance, and income received from overseas activities.

Structure and governance

Schools must detail whether they are part of a wider group structure (either as a parent or with subsidiaries), and whether the school's governing document allows for voting rights to any members other than the governors.

One of the areas of good news is that the requirement to confirm when a school's policies and procedures were last reviewed is being removed. Inevitably, though, the Commission giveth and the Commission taketh away – there is a new question which specifically asks organisations to confirm which policies and procedures were in place at the balance sheet date from an expanded list.

The list gives a further insight into the areas that the Commission considers potentially risky, focusing on recent challenges faced across the charity sector. For schools, relevant suggested policies are likely to include safeguarding, bullying and harassment, investing charitable funds and social media. In the safeguarding section, organisations will be required to confirm that they have obtained the required level of DBS checks for all roles which are eligible for them in the financial period – be those Standard DBS checks, Enhanced, Enhanced with Barred List(s), or just Basic checks.

Basic financial policies and procedures are also included, such as reserves and investment policies; internal financial control; internal risk management, governor expenses and conflicts of interest, and serious incident reporting. The expanded list could be used as an aide memoir when governors review the policies their school has in place to ensure all relevant areas are covered.

Overseas activities

Schools that either operate overseas or have overseas students (or both) will be faced with increased requirements when they come to filing the new annual return. The new questions require schools to detail the value of funds received from overseas and how they were received – obviously this is most applicable to fee income received from outside the UK, but donations received from abroad will also need to be included.

The Commission has been increasingly interested in how funds are sent overseas across the charity sector over the last few years, and the updated annual return reflects this. For any schools that have international branches, there are additional questions relating to what level of charitable activities have been provided outside of the UK – with schools required to detail the level of funds spent overseas by country, and provide details of the methods used to transmit funds.

Other changes

Schools will be required to detail the number of people permanently employed at the balance sheet date, the number on fixed-term contracts, and the number working as self-employed individuals (note: any schools over the large company threshold should ensure that they are aware of the requirements of the IR35 legislation regarding off-payroll working).

There are also new questions on payments made to governors (excluding expenses); whether any governors resigned to take up employment positions within the school; and confirmation that the details of the public address provided on the return remains accurate and whether this should be considered the location of the school's administrative headquarters (if not, schools are requested to disclose the headquarters' address).

For any schools engaged in grant-making, the total value of grants made to individuals, other charities, and other organisations is required, as well as details of grants paid to related parties. There is also a requirement to disclose the highest donations received from both corporate and individual donors.

A new guide to assist charities in completing the return was released in February and can be found here. The government has posted a full list of the questions here, and have indicated the changes from previous returns here.

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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 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.

Quarterly charities update
Tuesday 14 March 2023
15:30 – 17:30
Online

AGBIS annual conference
Monday 20 March 2023
09:00 – 17:00
QEII Centre, London

NFP VAT and Tax Exchange
Tuesday 28 March 2023
14:00 – 15:00
Online

Trustee training: What every trustee should know
Thursday 30 March 2023
09:30 – 13:00
Online

Bi-annual schools update
April 2023
15:30 – 17:30
Online

ISBA 2023 Annual Conference
Tuesday 23 – Thursday 25 May
Manchester Central Convention Complex

Quarterly charities update
Tuesday 6 June 2023
15:30 – 17:30
Online

Quarterly charities update
Tuesday 5 September 2023
15:30 – 17:30
Online

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

Schools 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 Schools team as detailed below.

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