



# hospitality | briefing

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## editorial



**Welcome to the Spring 2009 edition of the haysmacintyre hospitality newsletter.**

In this edition we consider the topical issues surrounding an entity's ability to continue as a going concern when preparing financial statements. With the VAT deadline for claims looming, Phil Salmon addresses the implications this will have on the hospitality industry.

We also look at recent changes that have taken place in Employment Taxes, including online filing changes and the new system called BillPay which allows taxpayers to settle due tax by credit or debit card.

Finally, we review the impact that breaching covenants will have on the look of a company's balance sheet.

We hope you enjoy the read and please do contact any member of the Hospitality Team if you would like further information.

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## crumbs from the table



**HMRC may not typically be known for their caring side but in the current economic climate they have thrown us a few crumbs to help out.**

A new system called BillPay has been introduced to allow taxpayers to settle tax due by credit or debit card. The system does not accept Diners Club or American Express and the maximum payment possible is £99,999.99.

Additionally, the Business Payment Support Service (BPSS) is designed to assist all businesses (large and small) who find that they are unable to pay their tax. It covers most taxes including PAYE and National Insurance.

To qualify, the business must be:

- in genuine difficulty;
- unable to pay their tax on time;
- likely to be able to pay if HMRC allowed them more time.

You can contact the BPSS on 0845 302 1435, 8am - 8 pm Mon-Fri or 8am - 4pm at weekends. Your agent/advisor can contact HMRC on your behalf so long as HMRC hold an agent authorisation form 64-8.

## juicy fruit

A report published at the end of 2008 by the House of Commons Public Accounts Committee highlighted the challenges faced by HMRC in tackling the hidden economy. Overall, the detection rates for 'moonlighters' was a measly 1.5%. Whatever HMRC does to improve these figures it is likely that many will escape detection, and the current economic situation is unlikely to improve matters. But 'low hanging fruit' has always been appealing to HMRC and any small business where cash is involved is a juicy prospect. The hospitality industry is just such a treat; can you be sure that you are ready for an employer compliance review?

We recommend that you review your systems, considering all areas where HMRC may look. It is likely that you will be subject to an in depth examination of payroll records, cash transactions, the Tronc if you operate one, status enquiries if you treat and pay anyone on a self employed basis, and other benefits and expenses paid to staff. Employer compliance reviews can arise from random selections, late payment of PAYE or some other information that has come into HMRC's hands. The fact is you will never know why you have been selected.

If your business is targeted by HMRC for an employer compliance review you can either handle it yourself or call in your advisors to guide you through the process. HMRC officers are skilled investigators for the most part and good listeners. If you handle the review on your own, beware of making off-the-cuff remarks about anything, if you don't know the answer do not be tempted to offer a quick, possibly inaccurate answer that may haunt you later on. Instead, tell the inspector you need time to research it. Prepare for meetings and make good notes of what you say and provide them with these.

Asking your advisors to help may seem unnecessary where you know you have done nothing wrong but typically employer compliance reviews result in a settlement of some degree, even small sums add up when taken back six years and after interest and penalties are added.

## online filing changes

Employers with 50 or more employees are reminded that with effect from April 2009 the following forms must be submitted online to HMRC:

- form P45 (1) Details of Employee Leaving
- form P45 (3) New Employee details
- form P46 – New Employee without a form P45
- and similar information for people receiving a pension.

To file online, you must first register with HMRC's online PAYE service. Go to <http://www.hmrc.gov.uk> and click on 'PAYE for Employers' under the 'do it online' menu.

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## more problems with breaches in covenants



**As well as the problems that arise on an entity's business as a result of a breach in covenant, directors must also consider the impact on the results shown in the financial statements.**

FRS 25 states "Financial Instruments: Disclosure and Presentation" (IAS 32) para 50c

"When an entity breaches an undertaking under a long-term loan agreement on or before the balance sheet date with the effect that the liability becomes payable on demand, the liability is classified as current, even if the lender has agreed, after the balance sheet date and before the authorisation of the financial statements for issue, not to demand payment as a consequence of the breach. The liability is classified as current because, at the balance sheet date, the entity does not have an unconditional right to defer its settlement for at least twelve months after that date."

Therefore typical loan to value or interest cover covenants could be breached by the year-end but directors will not know until they have prepared their accounts some time later. If any of the bank covenants have been breached **the loan should then be presented as a current liability.**

If the bank goes on to waive the breach after the year-end then this is treated as a non-adjusting post balance sheet event and is only to be disclosed. If the bank waives the breach before the year-end then the loan should continue to be presented as a long-term loan, although in practice this is unlikely to happen.

The resulting reclassification of long-term loans could have a serious impact on the hospitality sector's balance sheets and credit scores.

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# going concern issues



**In the current economic climate, going concern will become an increasingly important consideration for companies in the hospitality industry. FRS 18 "Accounting Policies" requires management/directors to make an assessment of an entity's**

**ability to continue as a going concern when preparing financial statements.**

It states:

"When preparing financial statements, management shall make an assessment of an entity's ability to continue as a going concern. An entity shall prepare financial statements on a going concern basis unless management either intends to liquidate the entity or to cease trading, or has no realistic alternative but to do so. When management is aware, in making its assessment, of material uncertainties related to events or conditions that may cast significant doubt upon the entity's ability to continue as a going concern, the entity shall disclose those uncertainties."

## financial reporting requirements

For financial reporting purposes, the assessment of going concern is made at the date that the directors approve the annual report and accounts and considers the relevant facts and circumstances at that date. FRS 18 also notes that the degree of thought that may need to be given to the assessment will depend upon the facts of each case.

The directors assessment may include the preparation/review of:

- forecasts and budgets;
- borrowing requirements;
- bank and other facilities;
- contingent liabilities;
- products and markets;
- financial risks; and
- financial adaptability.

Forecast and budgets should be prepared to cover the period to the next balance sheet date as a minimum, with further periods generally covered by medium or long-term plans that give an indication of how directors expect the company to fare.

The assessment is based on what is known to the directors at the date on which they approve the annual report and accounts.

This includes events or circumstances they are aware of that arise after the end of the review period.

FRS 18 requires disclosure if the period considered by the directors is less than twelve months **from the date of approval of the financial statements**. In such a case the directors need to consider whether additional disclosures are necessary to explain adequately the assumptions that underlie the adoption of the going concern basis.

## audit issues

Auditing standards also address going concern and the period of review by the directors. Auditors have an explicit obligation to include an extra paragraph in their audit report if the period covered by the directors' review is less than twelve months from the date of approval of the annual report and accounts and this fact is not disclosed by the directors.

The facilities available to the company should be reviewed and compared to the detailed cash flow forecasts for the next twelve months. Sensitivity analysis of the critical assumptions should also be used in the comparison.

The directors should seek to ensure that there are no anticipated:

- shortfalls in facilities against requirements;
- arrears of interest; or
- breaches of covenants.

Directors are responsible for managing borrowing requirements actively. Any potential deficits, arrears or breaches should be discussed with the company's bankers to determine whether any action is appropriate. This may prevent potential problems crystallising. The onus is on the directors to be satisfied that appropriate and committed financing arrangements are likely to be in place.

The directors may seek confirmation from their bankers regarding the existence and status of any financing arrangements which the company has entered into.

In the present economic environment bankers may be reluctant to provide positive confirmations to directors that facilities will continue to be available. This may extend to companies with a profitable business and relatively small borrowing requirements.

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There may be a number of understandable reasons, including:

- the bank responding that in the current economic environment, as a matter of policy, it is not providing such confirmations to its customers
- the entity and its bankers are engaged in negotiations about the terms of a facility (e.g. the interest rate). However there is no evidence that the bank is reluctant to lend to the company; and
- the bank renewed a rolling facility immediately prior to the date of the issuance of the annual report and accounts and is reluctant to go through the administrative burden to confirm that the facility will be renewed again in a year's time.

The absence of confirmations of bank facilities does not of itself necessarily cast significant doubt upon the ability of an entity to continue as a going concern nor necessarily require auditors to refer to going concern in their reports.

## conclusion

In forming their conclusion on going concern, directors will need to evaluate which of three potential outcomes is appropriate to the specific circumstances of the group and company.

The directors may conclude:

- there are no material uncertainties that lead to significant doubt upon the entity's ability to continue as a going concern;
- there are material uncertainties that lead to significant doubt upon the entity's ability to continue as a going concern; or
- the use of the going concern basis is not appropriate.

Directors will need to consider the position carefully in light of information available to them and the assumptions as to the future availability of finance. Accounting standards do not define what constitutes a 'material uncertainty that may cast significant doubt upon the entity's ability to continue as a going concern'. This involves assessing the probability of an event occurring and the impact it will have if it does occur. The assessment may require a high degree of judgment both by the directors, and subsequently auditors depending upon individual company and group circumstances.

## disclosure

If the conclusion is that there are material uncertainties that lead to significant doubt upon the entity's ability to continue as a going concern then those uncertainties should be disclosed.

Directors will need to explain in the Business Review the principal risks and uncertainties facing the company arising from the current difficult economic conditions. One of the purposes of the Business Review is to help the members assess how the directors have performed their duties. It is therefore reasonable to expect that it will also contain an account of how the directors intend to respond to these risks and uncertainties.

Issues requiring disclosure depend upon individual facts and circumstances and may include:

- uncertainty about current financing arrangements (whether committed or uncommitted);
- potential changes in financing arrangements such as critical covenants; and any need to
- increase borrowing levels;
- risks arising from current credit arrangements (including the availability of insurance, where relevant) with either customers or suppliers;
- a dependency on key suppliers and customers; and
- uncertainty posed by the potential impact of the economic outlook on business activities.

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# deadline for VAT claims looms



**Following a decision of the House of Lords in early 2008 a window of opportunity opened for hotels to claim for previously unclaimed VAT on purchases for periods prior to 1 May 1997. Such claims could go back for as long as the hotel had**

**been registered, and VAT existed, which in theory could mean a claim going back to 1973.**

The same principle applied to claims for VAT that had been overpaid, but in the case of VAT on sales, one could only make claims for periods ending prior to 4 December 1996.

*However, the opportunity to make such claims ends on 31 March 2009.*

Following this date claims can only go back three years from the current date. Now may be your chance for a last minute trawl through old records to see whether there is an opportunity to submit a claim.

## delegate rates

Two areas which may be worth looking into are charges in respect of 24 hour delegate rates, and charges for guests staying more than 28 days. As regards delegate rates, there are essentially two elements: room hire and facilities and food. HMRC were of the view that the entire charge was subject to VAT, but in 2005 this changed and they accepted that if a meeting room was made available for a conference under a 24 hour delegate rate, then the element of the charge relating to the provision of that room could be treated as exempt from VAT (except where an option to tax had been made over the hotel).

That opens up the possibility of submitting a claim for previously over paid output tax prior to December 1996. HMRC might seek to resist such a claim on the grounds that the hotel would be unjustly enriched since the VAT would have been borne by the hotel's customer, and not the hotel itself. But, this argument has to be raised by HMRC and may not be true depending on the hotel's pricing policy.

## long stay accommodation

As regards long stay accommodation, if a guest stays for more than 28 days, there is a reduced valuation provision which applies to charges made from the 29th day onwards. This restricts VAT only to charges in respect of services other than accommodation, e.g. food, subject to a minimum of 20% of the total value charged being subjected to VAT.

HMRC took the view that this only applied where the provision of the accommodation was to an individual, but in 2006 this was successfully challenged by a Housing Association that contracted with a hotel to provide it with accommodation. As a result of this any hotels, which prior to December 1996, supplied accommodation to a Local Authority, Housing Association, or another organisation providing accommodation to the homeless, or asylum seekers, could also make a claim.

This only applies where the accommodation is used by a single occupant, and not a succession of occupants, who individually stayed less than 28 days.

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## about the haysmacintyre hospitality team

haysmacintyre is an emerging force in the hospitality industry. Our services include audit, business tax, corporate finance, VAT, PAYE, payroll and company secretarial. We have set up a number of new tronc schemes for existing clients and provide support with fundraising and placement of shares. We also offer personal tax advice for hoteliers and restaurant owners.

Recent projects include acting as reporting accountants for the offer of subscription of 3,125,000 new ordinary shares for Albannach Plc, the Trafalgar Square based bar and restaurant.

haysmacintyre's hotels and restaurant sector is led by Andrew Ball who trained and qualified with the firm. Andrew acts for a wide range of corporate entities and specialises in working on admissions to AIM and the full market as well as performing due diligence exercises. He has also assisted a number of clients on the conversion to International Accounting Standards.

haysmacintyre, Chartered Accountants and tax advisers, comprises 24 partners and 160 staff based in Holborn, London. It provides high quality auditing and assurance, business and personal taxation, corporate finance, financial planning and other business support services.

## future events

### form p11D workshop

We are holding a workshop on the 29th April 2009 to provide simple explanations and practical guidance on the details of how costs should be reported on form P11D. This workshop is aimed at those responsible for collating P11D information, completing the form and submitting them to HMRC. For further information please contact: [jtaylor@haysmacintyre.com](mailto:jtaylor@haysmacintyre.com)

### Young Guns Awards

Sponsored by haysmacintyre, the Young Guns Awards are a competition that celebrates the most outstanding young entrepreneurs in the UK. The closing date for applications is 4th July, so please visit [www.young-guns.co.uk](http://www.young-guns.co.uk) for further information.

