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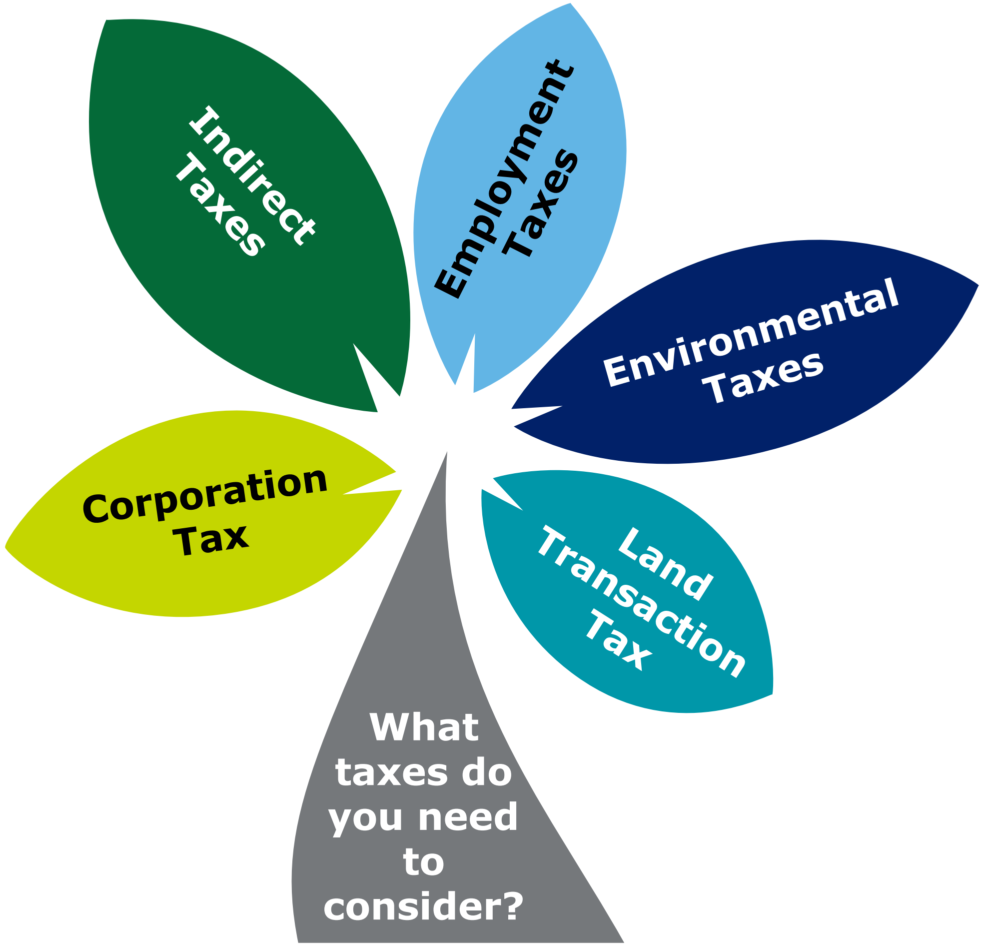
Community Housing Cymru – Finance Conference
Tax 101

12 July 2019

Tax 101 – an introduction
Purpose of the session

- Introduction to the basic principles of tax for housing associations
  - VAT
  - Corporation Tax
  - Employment Taxes
- HMRC interaction with the sector
- Tax management and governance

Tax 101
What taxes?



Corporation Tax
- Tax on profit
- Tax on capital gains
- Transfer pricing

Indirect Tax
- VAT
- Customs duties
- IPT

Employment Taxes
- CIS
- Payroll e.g. PAYE
- Employment status
- National living wage

Environmental Taxes
- Landfill tax
- Climate change levy
- Aggregates levy

Land Transaction Tax
- Transfers of land and buildings

VAT

Mechanics of VAT

How it works

- VAT is a tax on the supply of goods and services
- VAT is not a tax on profits
- VAT is a tax on each stage

VAT in HAs

- VAT incurred on expenditure largely irrecoverable – significant cost
- Diversity of activities makes it particularly complex

VAT liability of income

Taxable - 20%

- Management charges
- Sale of bare land (opted)
- Rent or sale of commercial property (opted)
- Sale of new (<3 years old) commercial property
- Ancillary e.g. laundry

Taxable - 5%

- Fuel and power

Taxable - 0%

- Shared ownership first tranche
- Open market sales

Exempt

- Residential lettings
- Residential service charge
- Sale of land or commercial buildings (not opted for tax)
- Welfare services
- Supplies of services by cost sharing groups

Outside the scope

- Transfer of business as a going concern (TOGC)
- Supplies within a VAT group
- Grant income
- Compensation

Key principles
Partial exemption

VAT incurred on costs

Recoverable (Taxable)

Taxable supplies (e.g. shared ownership, market sales, recharged repairs)

Partly Recoverable

Taxable & exempt supplies (overheads)

Partial Exemption Method determines recovery of residual VAT

Irrecoverable (Exempt)

Exempt supplies (e.g. residential lettings)

VAT reliefs for charitable housing associations
Mitigation of irrecoverable VAT cost

Zero rate – 0%	**Reduced rate – 5%**
Advertising (for charities)	Fuel and power
Certain aids for handicapped	Energy saving materials
Disabled adaptions	Conversion costs
Alarm call system and necessary repairs / maintenance	
Construction / conversion costs for dwellings	
Printing & books	

Hot topics

Housekeeping items	HMRC / legal changes
Group structure	Making Tax Digital for VAT (MTD)
Partial exemption special methods • Changes in activity • Interaction with mergers	Cost sharing exemption
Non-business income	Domestic reverse charge on construction services
Non-core income (e.g. solar, care lines, insurance, laundry, utility commissions)	Cladding
Option to tax / commercial property	Service charges
Non-monetary consideration	HMRC change – specialist housing team
Changes of intention	
Cross border purchases	

Making Tax Digital for VAT (MTD)

What is it?

Requires taxpayers to manage their VAT record keeping and compliance reporting digitally, through the following 3 requirements.

01

VAT return information (i.e. the 9 VAT return boxes) must be submitted to HMRC via MTD functional software

- At present, most taxpayers submit their VAT returns through manually re-keying into HMRC's online portal.
- Online portal will close from April 2019 (or October 2019 if deferred).
- All submissions must be done digitally via HMRC's MTD API (Application Programming Interface).
- HMRC has published a list of approved software providers.

02

VAT records must be kept digitally

- Does not mean taxpayers have to store each invoice and receipt digitally, however the transaction data will need to be stored digitally.
- Includes an AP and AR transactional listing and a digital 'VAT account'.

03

Digital links must be used through the VAT return process (e.g. the return must link to the digital records)

- VAT returns must have digital links to digital records – spreadsheets can remain, but they will need 'digital links' to source systems.
- No cut and paste, rekeying, etc.
- HMRC has announced a soft landing period of 12 months, however digital links will be mandatory from April 2020 (or October 2020 if deferred).

- HMRC guidance - VAT Notice 700/22 on Making Tax Digital for VAT
- Deloitte solution – myInsight VAT Return Filer www.deloitte.co.uk/makingtaxdigital

Domestic Reverse Charge (DCR) on Construction Services

What is it?

In a bid to combat VAT fraud within construction supply chains, from **1 October 2019** customers may be required to self-account for VAT on construction services received.

- Only positive rate supplies of **'construction services'** where payments are required to be reported under CIS
- The effect is that recipients of 'construction services' should self-account for any output tax due
- **End users will be excluded** as will **intermediary supplies** (i.e. those connected to an end users who is making an onwards supply to that end user) – normal VAT accounting will apply
- No formal certification will be required by an end user, but HMRC consider the onus will be on the end user to make the supplier aware in writing that it is an end user
- Example wording has been provided
  - *Reverse charge: VAT Act 1994 Section 55A applies*
  - *Reverse charge: S55A VATA 94 applies*
  - *Reverse charge: Customer to pay the VAT to HMRC*

Key Considerations

- Cash flow modelling – this could potentially have a positive or negative effect on cash flow which finance teams need to understand.
- Systems implementation – businesses will need to understand what systems changes are required.
- Staff training – enabling staff to recognise when the reverse charge applies.
- Communications with customers and suppliers. If an end user, notifying this to suppliers.

HMRC Guidance Note (published 7 Nov 2018)

Law *- The Value Added Tax (Section 55A) (Specified Services and Excepted Supplies) Order 2019*

Cost Sharing Exemption (CSE)

What is it and how can Housing Associations still use it?

- The exemption applies when 2 or more organisations with exempt or non-business activities join together on a co-operative basis to form a Cost Sharing Group (CSG)
- A cost sharing group is a separate, independent entity, set up to enable its members to supply themselves with certain qualifying services at cost and exempt from VAT
- Strict conditions limit the ability to use the exemption, and these are gradually becoming more restrictive following case law decisions over the last few years
- CJEU case law has the potential to remove use of the CSG for housing associations. However, Deloitte has been working with HMRC and the NHF and **has secured initial assurance from HMRC that the sector can continue to apply the exemption.**
- A further business brief is due to be issued shortly

HMRC Guidance - **RCB 3(2018)**, **RCB 10(2018)** and **VAT information sheet 02/18**

Corporation Tax

Tax 101

Corporation Tax

Registered Provider (charitable status)	Registered Provider (non-charitable)	Trading subsidiary (non-charitable status)	Other charitable entities
Exempt from CT on many types of income and gains	Within the scope of corporation tax on profits and gains	Within the scope of corporation tax on profits and gains	Exempt from CT on many types of income and gains
Profits arising on non-primary purpose income and gains subject to corporation tax	May mitigate profits by donations to charity	May mitigate profits by donations to charity	Profits arising on non-primary purpose income and gains subject to corporation tax
Usually a Registered Society	Usually a Registered Society	Company limited by shares or guarantee	Usually a company limited by guarantee

Corporation tax for charities

Exempt

- Rent
- Investment income
- Gains
- Donations
- Trading – primary purpose
- Trading – de minimis

Potentially taxable

- Non-primary purpose trading
- Most miscellaneous sources

To benefit from exemption, the income must be applied for charitable purposes only.

- Direct charitable expenditure
- Approved charitable investments

Development activities: Primary purpose or non primary purpose?

Corporation tax for charities
Trading exemptions

Exempt

- Furthers a primary charitable purpose
- Ancillary to a primary charitable purpose
- De minimis exemption – turnover from all taxable sources is less than £80,000 per year (or 25% of income if lower)
  - Reasonable expectation at start of year

Potentially taxable

- Non-primary purpose trading

Corporation tax for subsidiaries

Profits subject to corporation tax – currently 19%

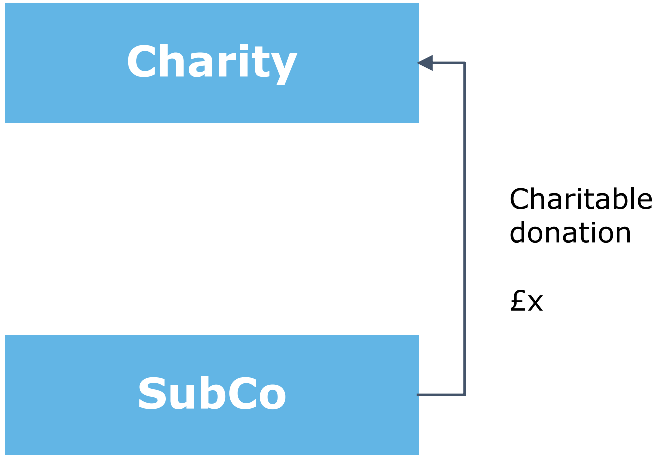
Can reduce taxable profits by making a charitable donation

- Paid in the accounting period, or
- Paid within 9 months after end of accounting period (if subsidiary is wholly owned by a charity)

Donation must be paid in cash and from distributable reserves

- Keep taxable profits closely aligned to accounting profits

Taxable profit	x
Charitable donation	(x)
Tax payable	-



Off-payroll workers (IR35) legislation

IR35: Off payroll workers

1. **Why change the legislation?**
2. **What is the change?**
3. **Formulating an approach**
4. **Interaction with CIS**
5. **Key considerations**

From April 2020!

Background

Why change the legislation

HMRC estimates **90%** non-compliance with IR35 rules

Problems identified by HMRC with the current IR35 regime:

a) Around 1m PSCs in 2015, of which one third are within IR35, of which 10% are compliant with IR35

b) Tax leakage from non-compliance estimated at c.£700m in 2017/18, rising to c.£1.2bn in 2022/23

c) Current rules present a choice of tax regime for the same job – direct engagement or PSC

d) Process for enquiring into PSC returns is lengthy, complicated and expensive for HMRC and so deterrent value is low, resulting in widespread perception that non-compliance is "low-risk"

e) Even where there is agreement that IR35 rules do apply, challenges in collecting tax due from the PSC, which may have limited assets

f) Recent use of "IR35-proof contracts" on an industrial scale (including insurance against failure)

Reported impact from Public Sector reforms:

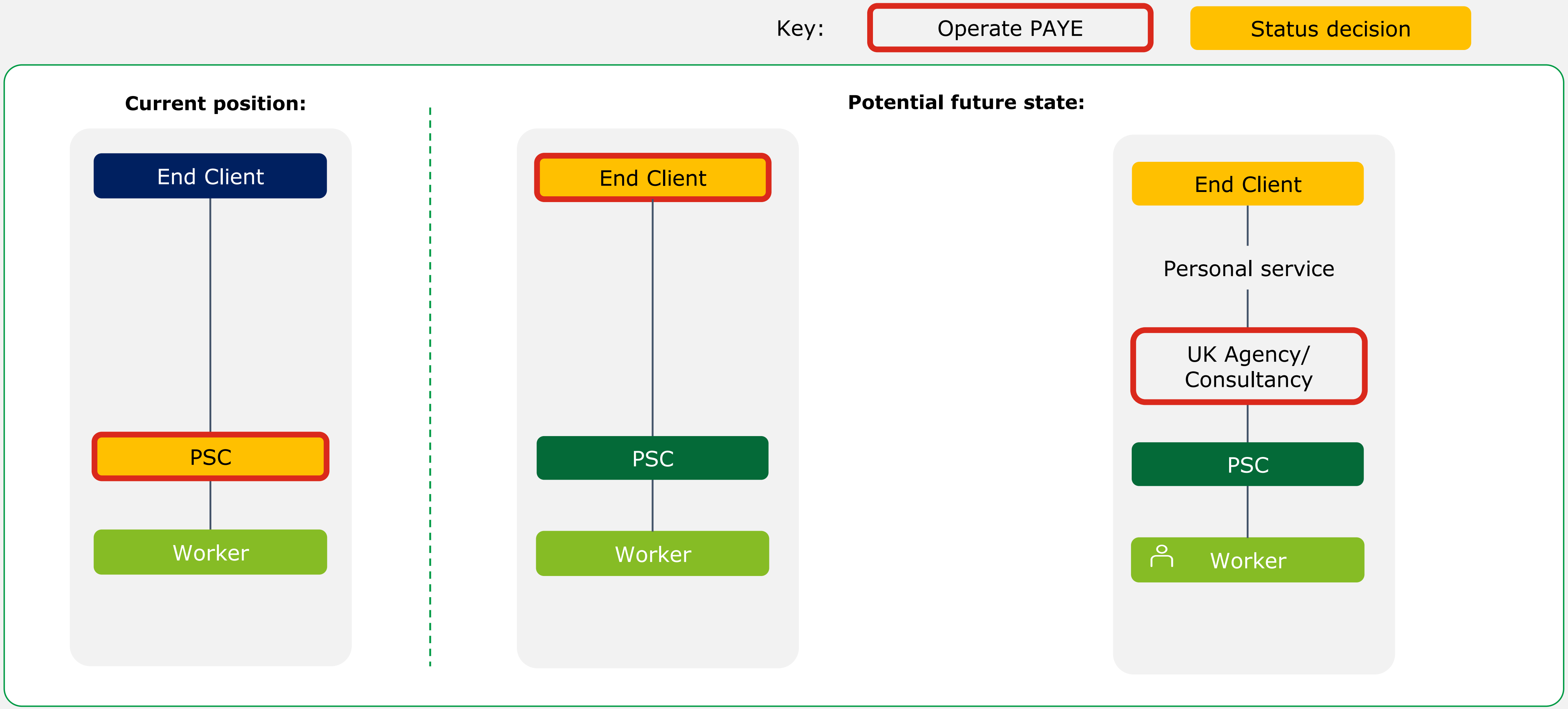
- 58,000 additional individuals now paying PAYE/NIC
- £410m additional tax and NIC receipts
- Number of "interventions" significantly reduced

Source: HMRC/HMT Consultation Document 18 May 2018

What is the change?

Impact of change (if as Chapter 10, Part 2, ITEPA 2003)

Position when IR35 applies (current rules v potential future state) – From April 2020



Formulating an approach

The project team and their priorities

Working together

Tax

- Understanding of the technical issues
- Compliance focussed
- Documented process and controls for SAO, Internal Audit, HMRC reviews etc.
- Future proof model
- Resources

The business

- Understand services to be provided by contractor
- Protect 'special cases'
- Limit impact and disruption to business/ contractor
- Cost impact

HR/ Talent

- Employment risk
- New category of 'employee'
- 'Recruitment' impact
- Dispute process clear and effective
- Limit disruption to business and contractor

Procurement

- Oversight of population
- Ensure consistent approach
- Contractual impact
- Checking compliance by agencies/third party providers
- Cost impact

Payroll

- Need to set up a separate payroll
- Resource (on top of BAU payroll)
- Additional information flows
- Dealing with different payment terms

Risk/Legal

- Contractual protection
- Employment/legal rights impact
- Policy documented

Interaction with Construction Industry Scheme

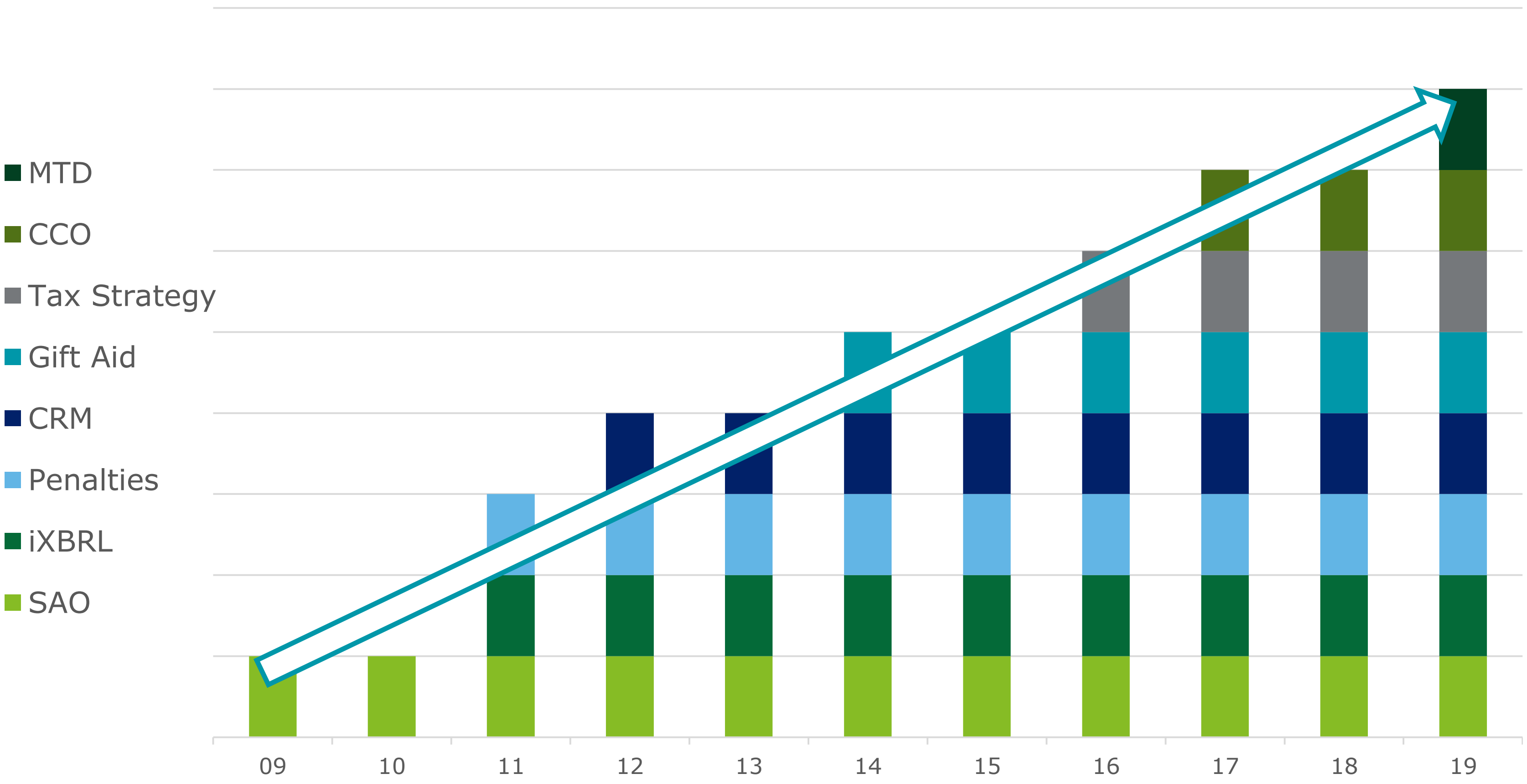
- Under CIS you already should be assessing the employment status of workers
- This legislation will mean you need to do this for all PSCs as well as individuals
- Off Payroll Worker legislation trumps CIS (i.e. if deemed employed pay via payroll not deduction)
- You will need to complete the OPW review before considering CIS

Key considerations

- Can you identify PSCs within your contractual chain?
- Can you identify the difference between an outsourced and personal service?
- Can you establish if someone is a deemed employee?
- Can you amend your CIS process to prioritise this legislation?
- Are you ready to have difficult discussions with Off Payroll Workers?
- Can you amend your payroll to pay anyone identified as a deemed employee?
- Have you considered the additional cost implications of this (i.e. cost of employers NIC and apprenticeship levy – 14.3%)?

HMRC Approach & Governance

Tax systems, processes and behaviours trend



Social Housing Tax Agenda

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HMRC's focus areas

- Group structure
- Connected parties
- Tax processes
- Resource and accountability
- Change management
- Tax paid

Risks to be managed

Public profile and reputation
Strategic tax cost management

Personal liabilities and fines

Senior management time

Compliance obligations and efficiencies

Tax Strategy Agenda

Effective tax management for housing groups

Policy approach to tax systems and processes

- Corporate criminal offence
- Tax strategy Publication
- Making Tax Digital
- Senior accounting officer
- HMRC risk reviews
- CCM relationship

Live sectoral issues
- Merger integration
- Acquisitions
- Cladding

Underlying sectoral issues
- Shared ownership
- Funding models

Live technical issues
- National minimum wage
- Corporate interest restriction

Resourcing tax management
- Seniority
- Specialism
- Scale

Engagement

Board and senior executive

Finance and tax functions

Finance, tax, HR, treasury development