

the Law

Autumn 2018

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The Law Society

Armstrong Watson's specialist publication for the legal profession

Healthcare focus

Clinical Negligence -
Indemnifying
General Practitioner

Closing your Law Firm

10% tax on closing your law firm – or will it be 38.1%?

Making Tax Digital

What is Making Tax Digital and what should your law firm do about it?

How ISAs can be inherited

An interview with...

Allan Carton, Managing Director of Inpractice UK

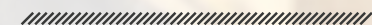


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The Law Society has exclusively endorsed Armstrong Watson for the provision of the following services to law firms throughout the North of England:



- Strategy Planning Workshops
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- Raising Finance
- Lock-up Reviews
- Pro-active Tax Planning
- Tax Compliance
- Audits
- Accounts Rules Reporting
- Accounts Preparation
- LLP conversions
- Incorporations
- ABS Applications

Welcome



Welcome to the Autumn 2018 edition of The LAW, the specialist publication for the legal profession from the legal sector team at Armstrong Watson.

Specialists are available from all of our 16 offices, to provide pro-active support and advice to lawyers in compliance and business improvement matters. This publication is designed to allow us to share our collective experience in acting for lawyers throughout the UK.

Following our acquisition of the Haines Watts Glasgow office, we now have a larger footprint in Scotland and our legal sector team are spending more time focussing on helping Scottish law firms. Our approach to improving the business of law is unrivalled in England & Wales and by bringing our unique approach to solicitors in Scotland, even more firms can now benefit.

As ever, we focus on ways to improve your business and your advice to your clients, including:

- Potential tax problems relating to retiring from law firms
- Issues associated with inheriting ISAs
- What your law firm should be doing about Making Tax Digital
- What lawyers should be aware of in acting for healthcare sector clients

To find out more on any of the above, including how we can work with you to help you and your clients, please do get in touch with me.



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Healthcare focus:

Clinical Negligence - Indemnifying General Practitioners

General practice is the vanguard of the NHS with an excellent worldwide reputation but it finds itself under increasing financial pressures, not least as a result of the expanding litigate environment within which it works.

It is both a requirement of law [Health and Social Care Professions (Indemnity Arrangements) Order 2014] and of registration with the General Medical Council [GMC] that all doctors have adequate and appropriate indemnity insurance (indemnity) for their work. The Clinical Negligence Scheme for Trusts [CNST] provides indemnity to NHS bodies for clinical claims and doctors employed by NHS bodies and providing services to NHS patients are indemnified for this work through their NHS employer. NHS Resolution, formerly the NHS Litigation Authority, is responsible for administering the CNST.

General Practitioner [GP] contractors [GP partners in the main], salaried GPs, locums and trainee GPs, however, are not indemnified by CNST and are required to take out personal medical indemnity. Likewise, doctors working in a private or independent setting are also responsible for arranging their own indemnity, all of which can be obtained through a medical defence organisation [MDO] of their choice.

There are three MDOs [The Medical Defence Union; The Medical and Dental Defence Union of Scotland; and, The Medical Protection Society] all of which are mutual, non-profit making organisations owned by their members, whose purpose is to indemnify members for incidents arising from their clinical care of patients and to provide advice and assistance on medico-legal issues arising in clinical practice.

Indemnity costs are a financial burden for all professions but the escalation in these costs for general practice has outstripped other sectors, rising at a rate of 10% p.a., and it is closer to 20% p.a. if cover is required for out of hours and/or unscheduled care sessions. It will therefore come as no surprise that indemnity costs for GPs have risen as a proportion of their income and whilst funding for expenses has increased within the GP NHS contract, this has not kept pace with the growing cost of indemnity cover.



The Department for Health and Social Care [DHSC] and NHS England have acknowledged the destabilising influence of this additional financial burden faced by GPs and have consequently provided additional funding to offset the increased cost - £30m in 2016/17 and a further £60m in 2017/18.

However, this approach is a short-term fix and the underlying cause of the increased cost of general practice indemnity must be identified and tackled if this 'run-a-way train' is to be stopped! There has been no apparent deterioration in the quality or safety of care within general practice, as reported in the General Practice Forward View, April 2016, but doctors are seeing more patients. This, coupled with higher public expectations of care and the growing number of claims companies, has resulted in patients being far more likely to sue today than in yester-year.

Despite the augmentation in claims, the MDOs have increased the proportion of cases closed without payment from 70% to 80%, but such results come with the cost of legal defence fees that are ultimately funded by doctors subscriptions to their MDO.

Crown immunity, called for by some GPs, is not an option but the DHSC has responded to general practice by agreeing to develop a more affordable and stable future through the introduction of a state backed indemnity scheme [SBIS] in England and Wales. This is a complex area and the detail is still being worked through but it is anticipated that the new scheme will be in place from April 2019.

It is envisaged that the new SBIS will provide clinical negligence cover to providers of general practice NHS services, out of hours services and any other integrated urgent care delivered through a NHS contract. Whilst core NHS activities of individual doctors and other healthcare professionals will be covered by SBIS, other aspects will not, and consequently doctors will need to ensure that they have appropriate indemnity cover for all services falling outside the SBIS remit.

SBIS will be administered by NHS Resolution, which has been established to oversee the 'fair and efficient resolution of concerns' and will be funded from within the health expenditure limits, although the financial impact on general practice is yet to be determined.

There is a considerable amount of work going on behind closed doors and only time will tell what impact, if any, changes in the general practice indemnity model will have on NHS funding and those seeking compensation from primary care clinical negligence!



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Making Tax Digital

What is Making Tax Digital and what should your law firm do about it?



The Finance Act 2017 allowed the introduction of Making Tax Digital (MTD) for VAT - this is the biggest change to VAT since paper returns switched to online filing. This is a big change and attention should be given as soon as possible.

»»» What does this mean for law firms?

It is worth clarifying where we currently are with regards to VAT. Any VAT registered business has a responsibility to provide information to HMRC by way of completing a VAT return, whether that is monthly, quarterly or annually. This is currently done by accessing the HMRC VAT gateway and entering the required information.

For the majority of businesses this is undertaken directly with HMRC; although for a number this is undertaken using an application programming interface (API) via accounting software providers such as Xero. Of those businesses that submit direct to HMRC many are still using manual systems to record their accounting information and others are using spreadsheets such as Microsoft Excel and Google Sheets. Law firms tend to use their practice management software that is more often than not now combined with case management in one solution.

»»» What is MTD?

MTD changes this for all VAT periods that commence after 1 April 2019 for all sole traders, partnerships, LLP's and companies (with Vatable turnover over £85,000). After this dates, the current HMRC portal will be closed and VAT returns will only be able to be submitted via API enabled software products. This will mean most law firms will need to be ready from 1 April 2019.

Once MTD is mandatory, businesses will be required to keep their accounting records in a digital manner. It was intended that spreadsheets would not count, but this has been relaxed as long as there is API that can link them to HMRC – unfortunately no such software is currently available.

»»» Requirements of accounting software

All law firms will need to review their software to ensure that it will be compliant with the new regime. As a minimum, it will need to be able to:

- Process records in a digital form
- Preserve digital records in a digital form
- Create a VAT return from the digital records
- Provide HMRC with VAT data on a voluntary basis
- Receive information from HMRC via the API platform in order to allow HMRC to send 'nudges' to the firm or their tax agent

»»» Digital record keeping requirements

HMRC has confirmed businesses do not need to keep digital invoices and receipts, however, they do need to keep the transaction data digitally.

The list below summarises what is required to be kept digitally:

Designatory data:

- Your business name
- The address of your principal place of business
- Your VAT registration number
- A record of any VAT accounting schemes that you use

For each supply you make you must record:

- The time of supply
- The value of the supply
- The rate of VAT charged

For each supply you receive you must record:

- The time of supply
- The value of the supply including any VAT that is not claimable by you
- The amount of input tax that you will claim

»»» What to do now?

An IPSOS MORI poll carried out in 2017 suggested 72% of businesses affected would seek help from their accountant/tax advisor. This means that accountants are going to be very busy helping clients and if this is left until April 2019, many businesses are not going to be compliant from the start date. To ensure your business is ready it is recommended you take action now.

If you are not using digital accounting software speak to your accountant as soon as possible so they can assist you through the process of conversion to digital. If you are using a digital accounting software then check with them to ensure their software is going to be MTD compliant in time.

»»» Armstrong Watson and digital cloud accounting

Armstrong Watson is the largest cloud accountant in the UK. We have more clients using digital cloud software solutions than any other accountancy firm. For general businesses, we recommend Xero accounting software. Xero is the leading digital software provider in the UK and Armstrong Watson is not only the largest Xero partner we have recently been announced as Xero's UK Accounting Partner of the Year in 2017.

However, although Xero has links with some legal practice management and case management software, it is not yet widespread in the legal sector and may be a better solution for the smaller law firms, with say fewer than 10 partners. For the larger law firms, it is more likely that the established legal sector software providers will provide an MTD solution.

MTD should not be seen as a red tape it should be seen as an opportunity to get control over your business information opening the doors to business forecasting/budgeting and significantly easier access to finance.



If you have any concerns over MTD please get in touch now and let Armstrong Watson show how we can help ensure you are MTD compliant and get a clearer view of your business by going Digital.



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Closing your Law Firm

10% tax on closing your law firm – or will it be 38.1%?



If you are trading through a limited company you may look at selling or re-structuring, and then winding the trading company up and claiming Entrepreneurs Relief to pay 10% tax on the remaining reserves in the company.

But care has to be taken if you continue to work as a solicitor after the winding up.

Since 6 April 2016, there has been a Targeted Anti Avoidance Rule (TAAR) and if this rule applies then a distribution made to an individual on winding up will be treated as if it were a distribution and taxed at dividend rates. Dividends are taxed as the top slice of income so you could then be paying 32.5% (up to £150k income) or 38.1% (above £150k).

The TAAR will apply if the following conditions are met:

Condition A: the individual receiving the distribution had at least a 5% interest in the company immediately before the winding up.

Condition B: the company was a close company at any point in the two years ending with the start of the winding up.

Condition C: the individual receiving the distribution continues to carry on, or be involved with, the same trade or a trade similar to that of the wound up company at any time within two years from the date of the distribution.

Condition D: it is reasonable to assume that the main purpose or one of the main purposes, of the winding up is the avoidance or reduction of a charge to Income Tax.

Conditions A and B are straight forward enough, but Conditions C and D can cause more of an issue.

Condition C is widely drafted to prevent the rule being easily avoided by subtly changing the type of trade or the trading activity, or by changing the trading structure. The term 'involved with the same or similar trades' means for example, it may catch a solicitor who carries on as a sole trader, partner or as a consultant after the winding up.

For the TAAR to apply, all four conditions need to be met, so Condition D - the purpose of the winding up - is crucial. HM Revenue & Customs (HMRC) manuals say that whether or not one of the main purposes is to avoid or reduce the tax charge is a matter of judgement to be made on the basis of facts in individual cases. There is specific mention in the guidance to special circumstances, for example an individual supplying short term consultancy to the new owners of the trade, where they would not expect Condition D to apply. But what if as well as the consultancy you did other legal work for your own clients? What if the consultancy was for a longer period and still providing services to clients? These types of situations may be an opportunity for HMRC to question the purpose of the winding up.

The conclusion to take from this is that if you are looking at winding up your company, whether due to a sale, merger or for any other reason, you should take professional advice to ensure you will not have any unexpected tax liabilities. These rules are only applied on a winding up, so timing of the winding up, or looking at how a sale is structured could lead to better tax outcomes.



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How ISAs can be inherited



It's been over 19 years since the Individual Savings Account (ISA) was introduced to replace the Tax Exempt Special Savings Account (TESSA) and Personal Equity Plans (PEPs). During this time the ISA has become a favoured savings vehicle for many.

UK individuals can now save up to £20,000 each tax year into an ISA, which can be invested in cash, stocks and shares or any combination of the two.

Despite a number of changes over the years, the primary benefit of an ISA has remained virtually the same – money saved is not subject to income or capital gains taxes - but ISAs are not entirely tax free, which is explained later.

The key tax advantages contribute to the appeal of ISAs and make it an easy choice to support savings at any point in life. Those who have saved into an ISA since the very start (or PEP or TESSA before this) can quite feasibly become an 'ISA millionaire'. Couples who have each contributed the maximum amount each year may have easily accumulated this figure between them, so what happens when one of them dies?

New rules introduced in April 2015 mean that you can inherit your spouse's ISA, which wasn't the case previously. Beforehand, you could leave your ISA savings to whoever you wished in your will, but on death the tax efficiency of the ISA itself was lost. Whilst your spouse could have inherited the funds in the ISA, the only way to make them tax efficient again would be by using their own annual ISA allowance over successive tax years.

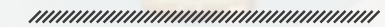
Under the revised post-April 2015 rules, upon death a surviving spouse/civil partner receives an Additional Permitted Subscription (APS) which would be equal to the value of the ISA on the date of death. In this case, the surviving spouse/partner would now have an additional ISA allowance in their own name and retain the full tax efficiency of the ISA, in addition to their own annual ISA allowance. The spouse/civil partner also benefits from this allowance even if the ISA or the funds are left to someone else, such as children, in a will.

The APS can be used with the deceased's original ISA provider, the surviving spouse's own ISA provider or a new ISA can be opened to receive the funds - but it must be used within three years of the date of death, or 180 days after the estate has been administered.

A couple also need to be married or be in a civil partnership to benefit from the APS and inherit their deceased spouse's ISA. Simply leaving the assets in a will to someone such as a child will not create an APS.

As mentioned above, ISAs are not entirely tax free. Whilst no income or capital gains taxes are payable, ISAs do not escape Inheritance Tax (IHT), as the value of the ISA will still be included in your estate. This is an important consideration for all law firms dealing with probate and death cases.

ISAs rightly remain a popular choice but as they are not tax free, a greater awareness is required. Making use of gifts, trusts, allowances and ensuring that other investment wrappers are utilised for best effect can all help, which is where a fully rounded professional plan, taking all aspects into account is paramount.



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An interview with...

An interview with Allan Carton, Managing Director of Inpractice UK, a legal sector specialist consultancy known for its support of law firms in performance, use of technology and business development strategy

1. What do you see as the key developments in the legal profession right now?

In our areas of working with law firms on developing new business opportunities, the overriding picture I see is the emergence of some law firms that are more capable of differentiating themselves from their competitors than others. Key factors helping them to do that include:

»»» Sound, professional management, which is making a difference where it's been allowed to settle in, allowing time to take a step back to take stock of the business, clients, service, how people are managed, how technology is being used and the rest; and then being pro-active and persistent to introduce improvements.

»»» The potential of technology to let lawyers and their clients work and communicate more effectively and move to a digital (paper-lite) environment. The tools enabling this are increasingly user-friendly and intuitive to use either in the office or on the move, allowing people to work more flexibly.

»»» Increasing demand from clients for more of what they value in a legal service, however difficult that may be to define.

»»» More law firms developing within a more corporate structure, increasingly supported by external investment. To warrant investment, a legal business needs to be able to sell a sound business strategy and infrastructure.

»»» Responding to more proactive procurement of legal services by in-house legal and general counsel who have an increasingly clear agenda on the requirements they want their firms to meet, so there are some very clear targets to hit.

»»» Recognition that building a culture where the lawyers are inquisitive and innovative enough to develop and harness these new opportunities is increasingly critical. The firms that haven't got there yet need to catch up.

2. What new technology is now available in the legal sector?

There's a lot of talk about AI (Artificial Intelligence) but most firms still need to get the basics in place to establish a platform for the future. Hosting in a private or public cloud (e.g. Microsoft Azure) environment should be considered seriously as an option now to ease management, improve security and create flexibility. Microsoft Office 365 should be considered alongside your practice and case management systems to give access to a wide array of additional applications and tools.

In developing new business, most of the best opportunities lie in the client and contact database, but the information here on the people and the firm's relationships is usually incomplete or outdated. Lawyers just don't have time to constantly update this information as a matter of routine, which is why CRM systems have often failed. You should consider using Introhive to centralise, cleanse and automate the reliable capture, enrichment and update of that information going forwards. It is the piece that has been missing from CRM systems in the past.



3. How is technology changing the way that lawyers work?

Well, it's not just about the lawyers. Thinking about what I see happening right now, but not in anything like enough firms yet - moving to a hosted or managed environment can release the IT people to find the time to set up systems that make it easier for lawyers to work more efficiently. They can spend time configuring not just workflows in a case management system, but also tools in Office 365 like Teams (collaboration), Power BI (management reporting), Skype (online meetings), Security & Compliance (GDPR) and much more.

There is much that can be done to improve engagement with clients. For example, more use of speech recognition integrated with case management releases time for secretaries to let them become "client managers". Reliable automated capture and enrichment of contact and relationship information provides more time and ammunition to let lawyers focus on client relationships; not just doing the work.

Building relationships with clients makes the job of any lawyer much more enjoyable.

4. What are your top tips for law firms?

Get professional management in place, support them and try not to interfere/inhibit them too much.

Review your technology platform to decide how you can improve that to deliver the business you want to be in 5 years' time.

Get and keep your client data up to date so that you can be pro-active in developing your relationship with them. That will make you stand out. Let your people spend more time talking to clients about their world.



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