LOOKING AT LATCOs

LATCOs are one of the emerging corporate issues of our time. Whilst they are not new, in fact some have been around for a very long time, they are currently enjoying a renaissance period as Local Authorities (perhaps driven by tough financial constraints) search for innovation in service delivery or for alternative income streams.

For any Local Authority contemplating the creation of a LATCO it is important to take on board the experiences of others who have gone before. One of the most interesting developments of recent time has been the emergence of the LATCO Network (https://latco.network/) which aims to provide a forum for discussions and the sharing of experiences in the sector.

As a firm, Ensors have worked with a significant number of LATCOs and Local Authorities right across England. Experience shows, that being involved as early as possible in the discussions around the potential creation of a LATCO can provide significant benefits to the new organisation.

For any potential LATCO, the first decision is how should the new organisation be structured.

Under UK law there are a myriad of potential structures including:

- A company limited by shares
- A company limited by guarantee
- A limited liability partnership
- An incorporated charity
- An unincorporated charity
- A Community Interest Company (CIC)
- A Community Benefit Co-operative
- An Employee Benefit Co-operative

In fact, there are so many different options that the choice can appear bewildering. However, the choice of structure is key to the success of the organisation going forwards as there are a number of important differences in terms of taxation and other regulatory matters. Therefore, due consideration should be given to this and, ideally, expert advice taken.

It is well worth investing in external professional advice both in terms of accounting/taxation and legal advice as the potential savings can be considerable.

I have seen a number of LATCOs that were, in hindsight, set up with insufficient consideration being given to the most appropriate structure. As a result, significant amounts of tax and VAT leaked from the organisations and the only way to stop this was to re-structure. This being a much more disruptive and expensive process than getting the structure right to start with.

Directors' Responsibilities

Most LATCOs are run by Local Authority employees and the transition into the commercial world may not be familiar to them. In addition, many of those running LATCOs are also performing other public sector duties and therefore constantly switching between their Local Authority responsibilities and the responsibilities of a director.

A director's appointment comes with extensive legal responsibilities. Alongside the tangible tasks of keeping appropriate accounting records, reporting changes to Companies House, preparing and filing corporation tax returns, comes the responsibility to run and manage the company as permitted in its Articles of Association. Many of these tasks can be outsourced, but the legal responsibility never moves away from the director.

Failure to file accounts can lead to fines while continuing to trade when the company is insolvent could lead to a prosecution for wrongful trading.

If you are an employee of a LATCO, but the directors act under your instructions, you may be classified as a shadow director, and could also therefore be caught by the roles and the responsibilities of an appointed director.

A successful company director, and an effective board, is one that is informed of its roles and responsibilities under the UK Corporate Governance Code and the Companies Act 2006. It is vital therefore that directors receive appropriate directors' responsibility training.

An informed director will be much more comfortable making governance decisions and also communicating with shareholders, fellow directors and advisers.

Ensors guide to directors' responsibilities can be found on our website https://www.ensors.co.uk/directors-responsibilities/

Managements Accounts Do we really need them?

The primary function of Management Accounts or Management Information is to enable directors or senior managers within the LATCO to make quick informed decisions. There should not be any need to wait for your statutory accounts to be filed to find out how the business is performing.

There is no set format for Management Accounts and, as such, they can mean many things to many people. The type of information that you can include will depend on the type of market the LATCO is trading in and at what stage the business is at during its lifecycle.

Reviewing the LATCO performance on a regular ongoing basis means that there shouldn't be any surprises that could unravel your business, whether it be decreasing profit margins, increased staff costs or cashflow issues. Equally, if the LATCO is making higher profits than expected this may allow for dividend planning, tax planning or capital re-investment back into the business in order to sustain future growth.

For many it's a simple Profit and Loss report, but Management Accounts do not have to be just financial and can include anything that may provide information that will help make good business decisions. Many include key performance indicators such as turnover, bad debts, gross profit percentage, but they can include reports on staff sickness, customer ratings, website performance and cashflow.

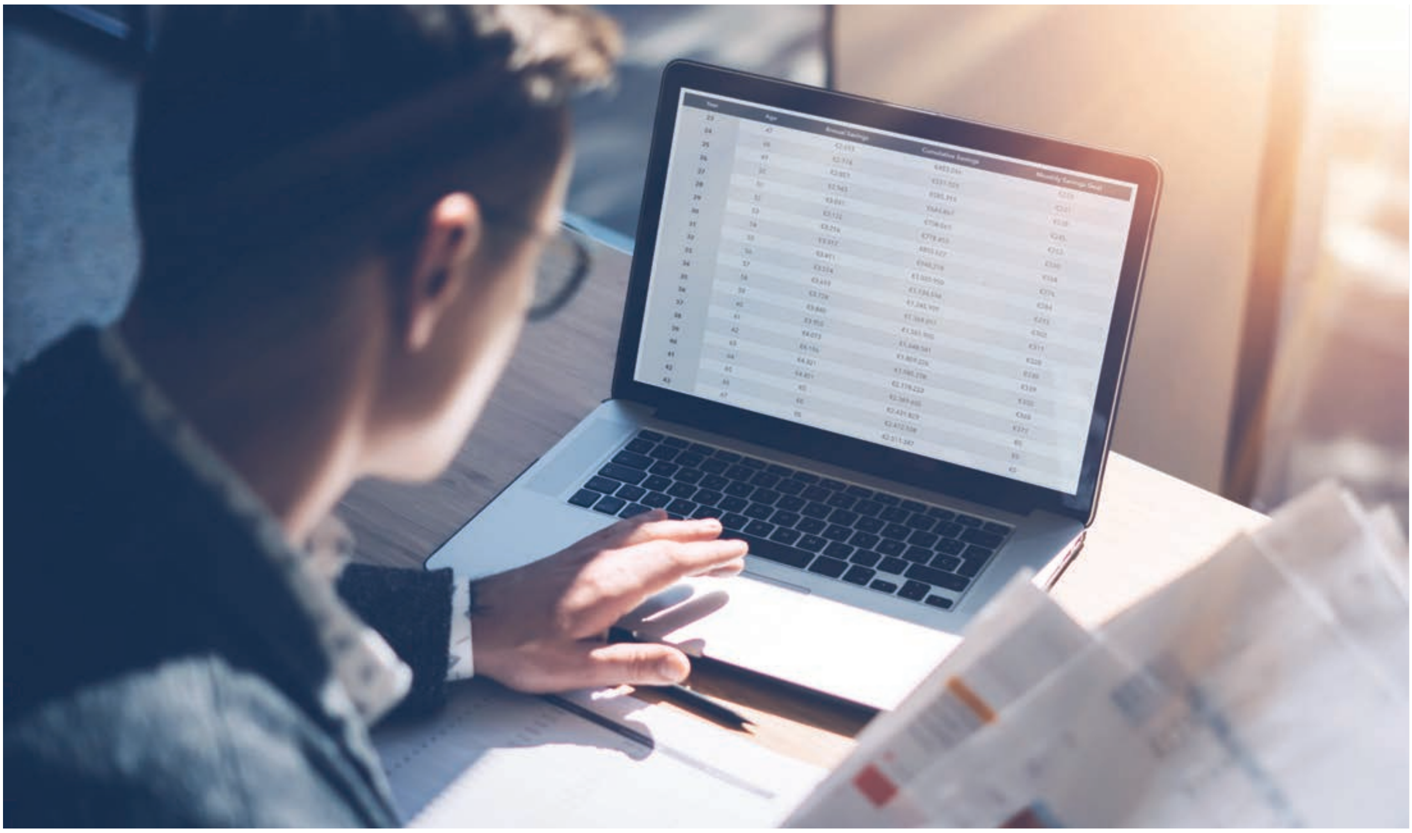
Reviewing of the financials on a regular basis has further benefits other than management decisions. It helps ensure that all the data is up-to-date and correct, regularly enabling queries to be resolved soon after month end rather than leaving queries until the preparation of the year end accounts. Resolving queries a few weeks after they happen is so much easier than waiting until the year end accounts are being finalised which could be 12-18 months after the transaction has taken place.

In order to get the financial aspect of the management accounts correct, it is imperative that bookkeeping is processed in a timely, efficient and accurate manner. This has to be done in a way that records the information required both from a compliance and regulatory perspective but also keeping management accounts in mind.

Designing and implementing these processes to be easy and also robust can be difficult but there's normally a simple fix. It's a lot easier nowadays than it used to be with the introduction of cloud-based accounting software being easily accessible and, on the most part, affordable.

Technology currently plays a big role streamlining processes and will continue to do so in the future.

‘Making Tax Digital’ explained



Local Authorities follow VAT Notice 749 in determining which activities are business or non-business for VAT purposes. The VAT notice states that: “*Because VAT is a tax on transactions, individual circumstances need to be considered according to their facts. But the general rule is that where a public body is funded by way of public expenditure (such as grant-in-aid) to do something for the public good, it’s unlikely to be engaging in business activities for VAT purposes. Such activities are outside the scope of VAT*”

A LATCO (Local Authority trading company) will however be trading on normal commercial terms and therefore it is worth taking advice on VAT registration and, in particular, to be aware of how VAT is now administered through Making Tax Digital (MTD).

We are now eight months into HMRC’s regime of MTD for VAT (which commenced on 1 April 2019). This covers VAT registered entities whose VATable income is in excess of the registration threshold. This currently stands at £85,000 (measured on a rolling 12 monthly basis). The new requirement ensures that the data to complete the VAT Return is submitted directly from the accounting records, which are maintained in an electronic format, without the need to retype the relevant figures into the boxes that make up the VAT return.

This new requirement does mean that the basic accounting records need to be kept in a bespoke software package, which is compatible with HMRC’s systems (the most popular ones being Quickbooks, Xero and SAGE), or in a spreadsheet format using bridging software.

If your VATable income remains below £85,000 you are not required to register for “Making Tax Digital” and can continue to file returns via your existing HMRC account. (You can, however, register for ‘Making Tax Digital’ on a voluntary basis, but once in the scheme, you cannot leave).

Some VAT registered entities such as Trusts, Groups and not for profit organisations had their entry to the scheme deferred until 1 October 2019. They do now need to take steps to ‘come on board’ and the first cycle of returns that will be relevant in this case are those with quarters ending 31 December, 31 January and 29 February.

At the outset of ‘Making Tax Digital’ HMRC announced that there would be a light touch approach to compliance in the first year of the scheme and that penalties would not be levied during that period. VAT registered entities who did not sign up in the first cycle of VAT returns after 1 April, with quarter ends of 30 June, 31 July and 31 August, will have received a gentle reminder that it is a legal requirement for them to do so. We are expecting that the letters to those entities that miss the second cycle of VAT returns will be somewhat more ‘heavy handed’ so time to take action if you have not already done so!

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Services offered by **Ensors**

- **Audit**
- **Preparation of accounts**
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- **VAT compliance & advisory services**
- **Tax planning**
- **Organisation structural advice**
- **Payroll services**
- **Management accounting**

"As the Finance Director and Company Secretary of a start-up LATCO, the appointment of the auditors, accounting and tax advisors for the group was a crucial decision. Several firms were considered, including the local authority's own auditors. In the end the decision was an easy one for me due to Ensors impressive presentation and their directly relevant experience and knowledge. After two years the decision has been confirmed as the right one and the advice and assistance received has been first class and very professional. In particular I would like to compliment the audit team who have provided real business insights and recommendations, establishing an excellent working relationship with the HTS Finance Team and Board of Directors and Ensors first class taxation, PAYE and VAT advice that has enabled us to improve the group's trading position."

Alex Morris – Finance Director & Company Secretary, HTS Group Ltd

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