



NOTES FOR BUSINESS OWNERS

FAQS

Why is GDPR an issue?

The instant a GDPR rule is not followed, for example a Privacy Notice is not given, it is defective, or not in the right form, or is not given at the right point in the flow; an individual is automatically due a claim for financial compensation.

Huge organisations such as Google are being sued for significant sums, because they failed to provide the right kind of notice at the right point in time. Google have already lost a similar case back in 2015; the Court of Appeal was against them so they took it to the Supreme Court then confidentially settled before judgement because they knew they would lose, and the financial ramifications would have destroyed them.

The principle and position of this case applies to all businesses. If they have failed to follow even one of the 99 GDPR rules, they have given the claims away to every customer they hold data for. All the customer now needs to do is bring a claim against the business...

How can Corporation Tax Rebates help?

By bringing GDPR legal knowledge and accounting principles together, the team at Corporation Tax Rebates will look at a business's GDPR compliance procedures and documents and produce a 30-page report that can identify any breaches and quantify the financial risk to that business.

The report can then be used to add a provision for this risk in the business's annual accounts.

Why is it a provision?

The standards we have looked at are FRS102 and IAS 37. Which, in short, say:

- a** the entity has an obligation at the reporting date as a result of a past event;
- b** it is probable (ie more likely than not) that the entity will be required to transfer economic benefits in settlement; and
- c** the amount of the obligation can be estimated reliably.

As we can evidence that these conditions have been met, a provision can be made.

Why provide for GDPR breaches?

Statistics from the UK Government show that every business will be cyber breached in a two-year cycle. Under GDPR the business has to self-report and tell its customers, and each customer then has a claim. Breaches are a fact of life and carry huge cost for the business. We know many that have been breached multiple times. In the same way that banks provided for claims for PPI miss-selling in their accounts, businesses can provide for claims for GDPR breaches.

What does the GDPR Provision do?

The Provision reflects the likely level of claims and costs the business faces because it is not GDPR compliant. In accounting terms it reduces the amount of profit on which you pay tax as a business. It does not reduce the amount of cash in the business, just the amount going out in tax. As the GDPR rules changed in 2018 and because HMRC will allow you to amend the last two years' tax returns, Corporation Tax Rebates can assist with recovery of tax paid in the last two years.

Doesn't a Provision need to be reversed?

As with any Provision, it either needs to be realised or reversed. Corporation Tax Rebates will assist in planning the reversal of the Provision over a period of time to be agreed with the business or provide strategies to deal with them at the right time for the business.

Won't the Provision make the business insolvent?

Although the Provision may cause a negative balance sheet, the business is not insolvent as long as they can pay their bills when they become due. The recovery of the corporation tax and the future reduction in taxable profits means that the cash flow is positively strengthened.

What does the reduction in profit mean for dividends?

These can be paid as long as there are reserves. The adding back of the corporation tax recovery strengthens the reserves so paying dividends should not be an issue, however we will work with each client to address any concerns.

What about banking covenants?

If the business has contracts that include liquidity ratios or similar, then these will not be affected. If the ratios involve profitability, then this may need negotiation but the effect of cashflow improvement by way of a corporation tax repayment should satisfy the lender. This would need to be reviewed on a case-by-case basis as the borrower may have other matters to consider, such as repayment history, causing the bank to refuse future lending.

Won't the amount be repayable in the future?

Not necessarily. To do that the entire provision would have to be released. As GDPR is an ongoing issue and no business can become 100% compliant, that is not prudent. For example:

- 1 it is going to take time to fix the historic breaches and they will never be fully dealt with, so some level of provision should always be retained;
- 2 you are always going to be subject to cyberattacks (and associated claims); and
- 3 will always get something wrong in relation to the GDPR rules because that is just what happens.

So, this should be reviewed annually, and it is likely that some level of GDPR provision should always be kept. If this is kept at a level which means the initial CT recovered is never brought into account that is a matter of judgement. There will also be an element of the refund that will be payable as a fee for this service. This amount will be tax and vat deductible and so in effect reduces the amount needing to be repaid.

Can't we just insure against GDPR claims?

The answer is - not at present. Even if you could, the insurer would want proof that you are GDPR compliant, or they could refuse to pay out. By definition, if you are getting GDPR claims against you then you are not GDPR compliant. You can get cybersecurity insurance, so if your systems are breached the insurer will pay for IT help and business interruption, but from what we have seen they will only pay if you can show you were GDPR compliant in the first place. If 1,000 customers sued for £5,000 each, would they pay that £5 million bill when your premium was £2,000?

How can businesses become GDPR compliant?

Corporation Tax Rebates Ltd has a solution to assist with becoming as close as possible to being GDPR compliant; an online progressive software system called Data Guardsman. This system allows businesses to work through a series of modules to build on compliance. The take up of the system is mandatory to the Corporation Tax Rebates process to assist us in assessing the provision level on an annual basis. The Corporation Tax Rebates team will, at the end of the business's financial year, assess the level of compliance via the Data Guardsman software and report any increase or reduction of the provision to the business so their accounts can be updated. At the end of the modules, an insurance policy is granted by Hiscox Insurance Brokers for up to £250,000 worth of cover.

Should Accountants be advising clients about GDPR provisions?

Absolutely! These liabilities are real and have accrued in businesses, and if quantified, should be provided for in the accounts if they are to give a true and fair view.

What about the costs for this service?

Our fees are only due when you receive your rebate from HMRC. We will then invoice for our GDPR consultancy service which is TAX and VAT deductible.