

TECHNICAL FACTSHEET

RIGHTS OF ACCESS TO ACCOUNTING RECORDS WHEN THOSE RECORDS ARE HELD BY A THIRD PARTY

ACCA LEGAL NOTICE

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GENERAL PRINCIPLES

1. Documents belonging to clients must be given to clients (or their agents if authorised to do so) promptly on request, or on ceasing to act for the client, except in those cases where members are able to exercise a right of lien.
2. For documents belonging to the professional accountant, the decision whether to allow clients (or their agents) to inspect them rests with the members. Clients have no rights to demand access.
3. Where clients ask the professional accountant to disclose documents to a third party and those documents belong to clients, members must disclose the documents unless they are exercising a right of lien. Where documents belong to the professional accountant they are not obliged to comply with the request.

CONTRACTS BETWEEN THE PROFESSIONAL ACCOUNTANT AND THEIR CLIENTS

Any specific agreement reached between the professional accountant and their clients about the ownership of documents will override any other considerations.

ACCA engagement letters include a schedule of services for the provision of bookkeeping services. This says that the professional accountant will prepare, from the information and explanations provided by the client, the client's books of prime entry, then lists those items. Under these terms those books of prime entry would belong to the client.

Where the professional accountant's work is to prepare financial statements from the client's records, the final financial statements belong to the client. If the client has specifically asked for other documents to be prepared for them then those would also belong to the client, such as draft accounts, otherwise they are likely to belong to the accountant.

Further information is provided in the factsheet entitled **Legal ownership of, and rights of access to, books, files, working papers and other documents** which can be downloaded from the [Factsheets and guidelines](#) page of ACCA's website.

RIGHTS OF ACCESS TO ACCOUNTING RECORDS WHEN CLOUD ACCOUNTING SYSTEM USED

The use of cloud accounting/bookkeeping software involves a third party providing computer accounting software and computer file storage facilities to enable accountants and their clients to update and store the clients' accounting records on the third party's system. Questions can then arise as to who owns the information stored and who has the right to access and retrieve that information.

Under normal circumstances there will be a contract involving the third party, accountancy firm and/or client. On a day-to-day basis the software system will normally be available to both the accountant and client to update and retrieve information from. Problems may, however, occur if there is a breakdown of the relationship between these parties. There are a variety of situations that may arise including the following:

- The accountancy firm ceases to act for the client.
- The accountancy firm ceases to act for the client, then ceases the contract with the cloud accounting system provider.

- The accountancy firm changes from one cloud accounting provider to another while still acting for the client.
- The accountancy firm changes from one cloud accounting provider to another after ceasing to act for a client.

ISSUES

Numerous issues may arise where access to the accounting records is restricted; below are some examples.

1. If the accountancy firm ceases to act for the client

- a. If the accountancy firm has the contract with the third party, then the client is likely to lose access to the cloud system when the accountancy firm ceases to act for the client. As explained above, the accountancy firm should promptly give the accounting records to the client on ceasing to act for that client. The firm may wish to inform the client that they will need to make arrangements so they can access their records and the time that they should have arranged this.
- b. If the client has the contract with the third party, then the accountancy firm should remove their access rights. The accountancy firm should ensure that adequate evidence is maintained on their own files, so that they can defend a possible claim against them. It would be advisable to include a sentence within the disengagement letter stating that the firm will not have access to the records. In normal circumstances they will not require access to that cloud accounting system in the future.

The sentence in the disengagement letter may state:

Accounting records

We state in our Terms and Conditions under Retention of papers that you have a legal responsibility to retain documents and records relevant to your tax affairs.

On our disengagement we will no longer have access to your accounting records you maintain on [insert third-party supplier]. You should liaise directly with [insert third-party supplier] to ensure you meet your legal responsibilities.

An example Retention of papers clause within an accountancy firm's Terms and Conditions is provided in [Appendix D](#).

2. If the accountancy firm has the contract with the third-party cloud accounting provider and that contract is terminated

- a. If the accountancy firm continues to act for the client, then the client will need to ensure that adequate records can be transferred from that third party. Access to the accounting records is likely to be limited after the contract is terminated. The letter of engagement between the accountancy firm and the client should specify whose responsibility it is to transfer these records.

For example, if the accountancy firm stops paying the third party then the contract may be terminated by that third party. The third party may also be able to limit access to the cloud accounting system from the time the payments ceased until the contract is terminated. Under these circumstances the letter of engagement between the accountancy firm and the client should specify whose responsibility it is to have stored the clients' records. If the accountancy firm has that responsibility, then the client may be able to sue that firm for the damages and costs incurred in recreating those records.

- b. If the accountancy firm no longer acts for the client, then if the records have already been transferred to the ex-client, no further action should be required. If the records have not been transferred, then there are two possible consequences. One is that the transfer information requirements on ceasing to act for a client contained in section 320 (Professional appointments) of the ACCA Code of Ethics and Conduct have not been complied with and it may not be possible to comply with them in the future, as these records will be held by the third party who may be preventing the accountancy firm from obtaining access. The other consequence is that, if the accountancy firm is responsible for keeping the accounting records of the client, then that client may be able to sue the accountancy firm for the damages and costs incurred in recreating those records. The terms in the letter of engagement and notification within any disengagement letter will be important in this situation.

3. If the client has the contract with the third party 'cloud accounting' provider and that contract is terminated

As the client has the legal obligation to keep adequate accounting records, the accountancy firm should have no legal obligations when this occurs. Their main issue may be that they have carried out work to update the information stored on the cloud accounting system and they will want to be paid for that work, even though the client may no longer have access to it.

HOW LONG SHOULD ACCOUNTING RECORDS BE RETAINED FOR?

How long accounting records should be retained for will depend on a number of different factors. These are explained in more detail in **Appendices A, B and C** but it is often the case that they should be retained for six years or more.

If the accountancy firm is responsible in some way for retaining those records, then if the accountancy firm requests a third party to retain the records on its behalf it needs to ensure that the agreement between the accountancy firm and the third-party storage provider meets the requirement of the accountancy practice.

If a third party is retaining the accounting records of the client, then the accountancy practice should ensure that the terms of engagement with that client are appropriate.

FURTHER INFORMATION

Further information is available on the ACCA website at www.accaglobal.com, or by contacting Technical Advice and Support in your region.

APPENDIX A

RECORD-KEEPING RULES IF REGISTERED FOR VAT

The basic rule is that you must create and retain normal business records. Most bookkeeping and computer systems will meet this requirement. VAT law requires you to keep your business records. In the view of HM Revenue and Customs (HMRC) these records will include:

1. annual accounts, including profit and loss accounts
2. bank statements and paying-in slips
3. cash books and other account books
4. credit or debit notes you issue or receive
5. documentation relating to dispatches/acquisitions of goods to/from EU member states
6. documents or certificates supporting special VAT treatment such as relief on supplies to visiting forces or zero-rating by certificate
7. import and export documents
8. orders and delivery notes
9. purchase and sales books
10. purchase invoices and copy sales invoices (see below)
11. records of daily takings such as till rolls
12. relevant business correspondence.

If some of the above records are not normal records for your business then you will not need to produce or keep them, but equally some businesses will create additional business records and these must be retained and produced to HMRC on request.

In addition, there are **two records** that are specifically required for VAT.

1. **The VAT account, which needs to show the link between the output tax in your records and the output tax on the VAT return and similarly for inputs**

The specific information required is:

Outputs

- i. the output tax you owe on sales
- ii. the output tax you owe on acquisitions from other EU member states
- iii. the tax you are required to pay on behalf of your suppliers under a reverse charge procedure
- iv. tax that needs to be paid following a correction or error adjustment
- v. any other adjustment required by VAT rules.

Inputs

- i. the input tax you are entitled to claim from business purchases
- ii. the input tax allowable on acquisitions from other EU member states
- iii. tax that you are entitled to following a correction or error adjustment
- iv. any other necessary adjustment.

2. A VAT invoice for supplies to other VAT registered businesses

A 'VAT invoice' is an invoice that contains the following information:

- i. a sequential number based on one or more series, which uniquely identifies the document
- ii. the time of the supply
- iii. the date of issue of the document (where different to the time of supply)
- iv. the name, address and VAT registration number of the supplier
- v. the name and address of the person to whom the goods or services are supplied
- vi. a description sufficient to identify the goods or services supplied
- vii. for each description, the quantity of the goods or the extent of the services, and the rate of VAT and the amount payable, excluding VAT, expressed in any currency
- viii. the gross total amount payable, excluding VAT, expressed in any currency
- ix. the rate of any cash discount offered
- x. the total amount of VAT chargeable, expressed in sterling
- xi. the unit price
- xii. the reason for any zero rate or exemption.

Special rules apply to invoices issued under a margin scheme or subject to a reverse charge.

If you provide an invoice to a person in another EU member state you must also show:

- a. the letters 'GB' in front of your registration number for cross border supplies
- b. the registration number of the recipient of the supply preceded by the alphabetical code of the relevant EU member state
- c. a reference to any new means of transport.

How long should VAT records be retained?

Generally, business records for VAT purposes must be kept for at least six years. If this causes problems due to lack of storage or undue expense, then HMRC may allow some of the records to be kept for a shorter period. Records can be kept on a computer or a number of computers.

If a business is sold or transferred as a going concern, in most cases the seller of the business will retain the business records. However, the seller must make available to the buyer any information the buyer needs to comply with their VAT obligations.

Where the buyer takes on the seller's VAT registration number the seller must transfer the records to the buyer unless the seller needs to retain the records. If necessary, HMRC may disclose to the buyer information they hold on the transferred business; HMRC will do this to allow the buyer to meet their legal obligation but HMRC will consult the seller first, to make sure that they do not disclose confidential information.

There is a financial penalty for failure to keep or produce the records required by law.

Further guidance on keeping VAT records is available in the [Record keeping \(VAT Notice 700/21\)](#) section on the GOV.UK website.

APPENDIX B

RECORD-KEEPING RULES FOR LIMITED COMPANIES

Companies are required to comply with the Companies Acts, and section 386 of the Companies Act 2006 lays out the duty to keep accounting records as follows:

1. Every company must keep adequate accounting records.
2. Adequate accounting records means records that are sufficient:
 - a. to show and explain the company's transactions,
 - b. to disclose with reasonable accuracy, at any time, the financial position of the company at that time, and
 - c. to enable the directors to ensure that any accounts required to be prepared comply with the requirements of the Act (and, where applicable, of Article 4 of the International Accounting Standards (IAS) Regulation).
3. Accounting records must, in particular, contain:
 - a. entries from day to day of all sums of money received and expended by the company, and the matters in respect of which the receipt and expenditure takes place, and
 - b. a record of the assets and liabilities of the company.
4. If the company's business involves dealing in goods, the accounting records must contain:
 - a. statements of stock held by the company at the end of each financial year of the company,
 - b. all statements of stocktaking from which any statement of stock, as is mentioned in paragraph (a), has been or is to be prepared, and
 - c. except in the case of goods sold by way of ordinary retail trade, statements of all goods sold and purchased, showing the goods and the buyers and sellers in sufficient detail to enable all these to be identified.
5. A parent company that has a subsidiary undertaking in relation to which the above requirements do not apply must take reasonable steps to secure that the undertaking keeps such accounting records as to enable the directors of the parent company to ensure that any accounts required to be prepared under this part comply with the requirements of this act (and, where applicable, of Article 4 of the IAS Regulation).

How long should accounting records be retained?

Section 388 deals with 'where and for how long records to be kept', and states the following:

1. A company's accounting records:
 - a. must be kept at its registered office or such other place as the directors think fit, and
 - b. must at all times be open to inspection by the company's officers.
2. If accounting records are kept at a place outside the United Kingdom, accounts and returns with respect to the business dealt with in the accounting records so kept must be sent to, and kept at, a place in the United Kingdom, and must at all times be open to such inspection.
3. The accounts and returns to be sent to the United Kingdom must be such as to:
 - a. disclose with reasonable accuracy the financial position of the business in question at intervals of not more than six months, and

- b. enable the directors to ensure that the accounts required to be prepared under this part comply with the requirements of this act (and, where applicable, of Article 4 of the IAS Regulation).
- 4. Accounting records that a company is required by section 386 to keep must be preserved by it:
 - a. in the case of a private company, for three years from the due date on which they are made,
 - b. in the case of a public company, for six years from the date on which they are made.
- 5. Subsection (4) is subject to any provision contained in rules made under section 411 of the Insolvency Act 1986 (c 45) (company insolvency rules) or Article 359 of the Insolvency (Northern Ireland) Order 1989 (SI 1989/2405 (NI 19)).

APPENDIX C

RECORD-KEEPING RULES FOR OTHER GENERAL TAXPAYERS

Records should be kept to support all the figures that should be entered on the self-assessment tax return, as HMRC can ask for evidence to support any such figure.

How long should accounting records be kept?

There are a number of factors that affect how long records need to be kept, as follows:

1. Self-employed people must normally keep their records for at least five years from the 31 January submission deadline of the relevant tax year.

For example, if the tax return for the year ended 5 April 2022 is submitted on or before 31 January 2023, then the records for the year ended 5 April 2022 should be kept until 31 January 2028.

2. If the tax return is sent in to HMRC before the deadline, then records should be kept for at least 22 months from the end of the tax year relating to that tax return.

For example, if the tax return for the year ended 5 April 2022 is submitted to HMRC on or before 31 January 2023, then the accounting records for the year ended 5 April 2022 should be kept until at least 5 February 2024.

3. If the tax return is sent in to HMRC after the deadline, then records should be kept for at least 15 months from the date the tax return was sent to HMRC.

For example, if the tax return for the year ended 5 April 2022 is submitted to HMRC on 20 April 2023, then the accounting records for the year ended 5 April 2022 should be kept until at least 20 July 2024.

4. Records relating to capital gains tax must be kept for at least a year after the self-assessment deadline. The records should include details and evidence relating to the purchase of assets that were disposed of. These purchases may have occurred many years before the tax return year.
5. If HMRC has started to investigate a taxpayer's tax return, then records should be kept for longer periods.

Further guidance is available in the [Keeping your pay and tax records](#) section on the GOV.UK website.

APPENDIX D

EXAMPLE RETENTION OF PAPERS CLAUSE WITHIN TERMS AND CONDITIONS

Retention of papers

You have a legal responsibility to retain documents and records relevant to your tax affairs. We will not retain these accounting records for you, and you should ensure that you have and maintain access to these records.

Where the accounting records are accessed via a third party, you should ensure that you maintain access to your records.

During the course of our work we may collect information from you and others relevant to your affairs. We will return any original documents to you if requested. Documents and records relevant to your affairs are required by law to be retained as follows:

Individuals, trustees and partnerships

- with trading or rental income: five years and 10 months after the end of the tax year
- otherwise: 22 months after the end of the tax year

Companies, LLPs and other corporate entities

- six years from the end of the accounting period

While certain documents may legally belong to you, we may destroy correspondence and other papers that we store, electronically or otherwise, that are more than seven years old. You must tell us if you require the return or retention of any specific documents for a longer period.