

JOB RETENTION BONUS

Payments for employers who keep on furloughed staff

RETAINED PROFITS

Is your business missing out on reliefs?

CJRS CLAIMS INVESTIGATED

HMRC reviewing support claims



Financial UPDATE

OCT/NOV 2020

Tax treatment of Covid-19 support payments

Government grants received during the pandemic are still taxable



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In this issue...

The Chancellor's Winter Economy Plan in September, coupled with additional measures in October and the cancellation of the autumn Budget, maintain focus on measures to support the country through the pandemic. Businesses and individuals have become reliant on government help for survival. In this edition we look at a number of issues around this support. We detail the grants available that must be considered as income for tax purposes. Eligibility for certain payments is now coming under scrutiny as HMRC reviews CRJS grants, looking to recover money that has been incorrectly claimed. The VAT cut for the hospitality sector is a boost, but mixed supplies is a complex area. Meanwhile, with the next Budget now in spring, the Treasury is reviewing capital gains tax with an eye to topping up the nation's funds. And we explore how you may be missing out on tax reliefs in your business.

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EMPLOYMENT

Remote working is here to stay

Working from home has again become the default position for many workers who are able to do so, which could continue for another six months. But not all can work from home. Employers need now to create safe and sustainable working environments for all their employees.

Most modern workplaces are not able to support social distancing if all staff return full time. Many have found working from home very effective, avoiding office distractions and those not entirely necessary meetings. Time previously spent on commuting can be regained, reducing numbers on public transport and cars on the road.

Working more flexibly can often mean being able to fit work around childcare and other family responsibilities, especially when children may be sent home from school to isolate at short notice. Such factors can create a happier and more diverse workforce, making work more accessible for people with disabilities.

For those continuing at home, their physical work space should be properly equipped, not just with their computer but also a good chair and table. Communicating expectations clearly is important, as is encouraging staff to take regular breaks and not work excessively long hours.

However, for some employees, working from home has a negative impact on morale, productivity and overall mental health. Their home conditions may be cramped, distracting or otherwise unsuitable. Isolation may give rise to anxiety. A Covid-secure workplace may be the best place for these employees and employers should be able to offer this alternative. It may be possible for some employees to work partly at home and partly in the workplace.

Employers need to establish a fair procedure for determining which employees work where and when, considering employees' personal concerns and circumstances, as well as business needs. Consultation with staff is essential. By now all workplaces should have Covid-safe measures in place such as screens, mask-wearing and hygiene facilities, as well as a Covid-19 risk assessment shared with staff.

It's clear that the pandemic has triggered an increase in workplace stress, anxiety and depression, whether directly from fear of the disease, or indirectly because of changes to ways of working, isolation or concerns about money and job security.

Employers have a duty of care to ensure the health and safety of their workforce, so far as reasonably possible, including employees' mental health and wellbeing. Staff should feel safe to discuss such concerns without fear of stigma within an effective framework of policies and systems to identify and manage mental health issues.



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EMPLOYMENT

Incentivising job retention

Later this year, a Job Retention Bonus scheme of £1,000 per employee will be available as an incentive to encourage employers to retain their furloughed staff once the Coronavirus Job Retention Scheme (CJRS) comes to an end on 31 October 2020.

The bonus can be claimed for all eligible employees, including company directors and agency workers. A claim under the new Job Support Scheme (running for six months from 1 November 2020) will not affect eligibility for the bonus.

CONDITIONS

The one-off payment of £1,000 will be given for every previously furloughed employee who remains continuously employed through to 31 January 2021. But the bonus will only apply to those employees who have been legitimately furloughed.

OTHER CONDITIONS INCLUDE:

- Eligible employees must earn at least £520 a month (the NIC lower earnings limit) on average between 1 November 2020 and 31 January 2021 – a total of at least £1,560 across the three months. However, there must be some earnings in each of the three months.
- The employee must not be serving a contractual or statutory notice period which started before 1 February 2021.
- The employer must comply with their RTI payroll reporting obligations through to 31 January 2021.

Only those earnings reported under the employer's RTI (real time information) payroll

will count towards the £520 a month average minimum earnings. For directors especially, it will be important they are paid sufficient salary each month.

SPECIAL CASES

There are specific provisions for certain groups:

■ Parental leave and military reservists

The CJRS rules were relaxed for those employees returning from statutory parental leave or after being mobilised as a military reservist. The bonus will be available in both cases if a claim is made under the CJRS for them and the other eligibility criteria are met.

- **Fixed term contracts** An employee's fixed term contract can be extended or renewed without affecting bonus eligibility, provided they remain in continuous employment.

- **TUPE transfers** The bonus will also be available where an employee transfer is protected under the TUPE legislation (and in certain other similar circumstances). The transfer must have occurred before 31 October 2020, there must have been continuous employment and the new employer must have submitted a CJRS claim for the employee.

CLAIMING

Employers will be able to claim the bonuses in the new year once they have filed their PAYE

for January 2021. Payments will be made from February 2021.

The bonus will be taxable, so the amount received must be included as income when calculating taxable profits.

AMNESTY

HMRC is clear that the bonus will not be paid where the furlough claim under the CJRS is found to be incorrect. There is an amnesty to allow employers to repay any overpaid CJRS claims without incurring a penalty, provided HMRC is notified within 90 days of the later of:

- 20 October 2020;
- the date the grant was received, or
- the date when circumstances changed so the employer is no longer entitled to keep the grant.

The minimum penalty is 30% of the grant improperly claimed, with a potential maximum penalty equal to the value of the grant.

If you have not made your CJRS claim for October, you can declare any previous overpayments as part of this claim. The October claim will, of course, be correspondingly reduced. Otherwise, businesses must contact HMRC to obtain a payment reference number and pay HMRC back within 30 days.

Tax treatment of Covid-19 support payments



Your business may be receiving various government grants to help mitigate loss of income due to Covid-19. In his Winter Economy Plan on 24 September and subsequent October update, the Chancellor announced additional support schemes. But be aware: these grants are taxable.

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ayments from the following schemes must be included in calculating taxable profits:

- Self-Employment Income Support Scheme (SEISS) including the extended scheme.
- Coronavirus Job Retention Scheme (CJRS), including the job retention bonus for previously furloughed employees who are still employed at the end of January 2021.
- Job Support Scheme (JSS) running from 1 November.
- Small Business Grant Fund (SBGF).
- Retail, Hospitality and Leisure Grant Fund (RHLGF), Discretionary Grant Fund (DGF) or their parallel schemes in the devolved administrations.

- Other payments made by public authorities to businesses in response to Covid-19 and any other Covid-19 support scheme.

These grants must be included in the business's taxable income for the period in which they are received. Where an individual member of a partnership receives a grant, that individual is taxable on it. The rationale for taxing these grants is that they replace the income of the individuals or companies receiving them.

But businesses will only have to pay tax on the grants if they make a profit in the accounting period in which they receive them. The impact of Covid-19 on many businesses has been so great that they will make a loss even after including any grants in their income.

SEISS GRANTS

HMRC estimates that up to 3.4 million individuals were eligible for SEISS payments

under the first scheme. The scheme has now been extended in a new form for six months from 1 November 2020. However, many people are excluded, as they were under the original SEISS, including the newly self-employed, those with trading profits of more than £50,000 and people operating as directors of their own limited companies. The new SEISS is also limited to self-employed individuals who are actively continuing to trade but are facing reduced demand because of Covid-19.

HMRC will have the power to raise income tax assessments to recover incorrect SEISS or CJRS payments or any CJRS payments that have not been used to pay furloughed employee costs. HMRC will also be able to charge a penalty in cases of deliberate non-compliance.

TAX RETURNS AND TAX PAYMENTS

Many self-employed individuals will include SEISS payments in accounts that form the basis for their 2020/21 tax return. They will need to factor in these grants when deciding whether to reduce their payments on account for 2020/21, which are payable on 31 January and 31 July 2021. These payments are based on taxable income for 2019/20, a period before businesses were impacted by Covid-19.



TAX

Capital gains tax in the spotlight

Government support for business during the Covid-19 pandemic has left a huge hole in the Treasury's finances. Tax rises could be on their way, with capital gains tax (CGT) under review.

CGT is paid mainly by wealthier people. Chancellor Rishi Sunak recently asked the Office for Tax Simplification (OTS) to examine the way people who sell second homes, works of art and stocks and shares can escape paying tax on their gains. This comes at a time when CGT receipts are expected to fall as a result of reduced values of property and shares.

Mr Sunak said he also wanted the OTS to report on how CGT rates compare with other taxes and how the present rules can distort behaviour. CGT is paid at 28% by higher and additional rate taxpayers selling residential property, compared with up to 45% on income.

Equalising CGT and income tax rates could raise up to £14 billion a year.

Profits on sales of other assets by higher and additional rate taxpayers are taxed at 20%. Business sales may be taxed at just 10% and CGT reliefs may permit taxpayers to defer CGT by reinvesting in qualifying new assets.

It is too early to say whether and when CGT might rise. Coronavirus-related measures may push reforms onto the back burner. But it would be wise to review your CGT position in readiness for the spring Budget and consider the optimum time to realise any gains.

EXTENDED PAYMENT WINDOW

Self-employed people were initially able to defer their second payment on account for 2019/20 until 31 January 2021, which would normally have been payable on 31 July 2020. Further time to pay was announced in September for taxpayers – self-employed and others – with up to £30,000 self-assessment liabilities. They will be able to use HMRC's self-service Time to Pay facility to arrange a plan to pay over an additional 12 months – up to January 2022.

LOCAL LOCKDOWN FUNDING

Businesses in England required to close because of further local lockdowns or targeted restrictions will be able to receive grants worth up to £1,500 per property every three weeks. These grants will also be treated as taxable income. An additional wage subsidy scheme paying up to 67% of wages for those affected by local restrictions was announced in early October.

If you need help with any Covid-related payments, please get in touch.



HMRC checks up on CJRS claims

The Coronavirus Job Retention Scheme (CJRS) ends on 31 October 2020, although it has been closed to new entrants since the end of June - with a few exceptions. HMRC has been checking into over-payments.

Since 1 October the government has paid 60% of salaries up to a maximum of £1,875 for the hours an employee is furloughed. Employers have had to top up employees' pay to ensure they receive 80% of their pay - up to £2,500 - for the time they are furloughed. These caps are reduced proportionately for employees who are only furloughed for part of their usual hours. Employers have also covered the cost of employer's national insurance contributions and pension contributions.

Throughout the scheme, which ran from 1 March 2020, employers have had to determine whether they meet the requirements for the CJRS and calculate grant claims accurately. Employers were told to use HMRC's online support and not to contact HMRC unless absolutely necessary. They were warned that

“ *Furloughed employees were not allowed to do any work that made money for or provided services to the employer, but could take part in training.*

HMRC would check claims and they would have to repay any grants that were based on incorrect information.

HMRC has carried out risk assessments and is now checking through claims. In the first stage of its compliance activity in August, HMRC wrote to around 3,000 businesses that may:

- have claimed more CJRS grants than they have been entitled to, or
- not meet the conditions to receive a grant, for example by including employees in their claim who were not eligible.

HMRC accepts that mistakes can happen, especially in the present situation. Employers may be charged penalties on excessive CJRS claims, but they will avoid charges if they did not know they had overclaimed and they pay back the excess grant voluntarily within the relevant period. For sole traders and partners this period ends on 31 January 2022 and for companies it ends 12 months from the end of their accounting period.

REVIEW YOUR CLAIMS

Businesses should review their CJRS claims without delay and tell HMRC about any

overclaims within the notification period. This period ends 90 days after the business has received a grant to which it was either not entitled or to which it is no longer entitled because of a change in circumstances. Overclaimed CJRS grants must also be included on the business's tax return for the relevant period, unless HMRC has already made an assessment.

Employers were able to claim grants for eligible furloughed employees, but from 1 July they could not claim for more than the maximum number of employees in any claim ending before that date, with a few exceptions. Employees could be furloughed for a portion of their hours and furlough agreements could be flexible.

TERMS OF FURLOUGH

During furlough periods employees were not allowed to do any work that made money for or provided services to the employer or any associated organisation, but could volunteer or work for another organisation or take part in training. Employers had to keep records of hours worked and hours furloughed. There were provisions for employees on fixed term contracts, apprentices, agency workers, employees unable to work because they were shielding, employee transfers under TUPE and employees on statutory sick pay or on maternity, paternity, adoption, parental bereavement or shared parental pay.

If you have any queries on your claims let us know.

BUSINESS

VAT on mixed supplies – a tangled tale

The extended temporary reduction to the standard rate of VAT for the hospitality sector may be caught up in the ongoing thorny issue of the VAT treatment of mixed supplies.

A mixed supply occurs when a business sells a mixture of goods or services, and more than one rate of VAT is involved in the transaction, as with a supply of food and non-alcoholic drink together with a supply of alcoholic drinks.

The uncertainties in the treatment of mixed supplies should have been resolved back in 1999 when the European Court of Justice ruled in a landmark case. However, a recent decision involving child car seats appears to contradict an earlier judgement, with further questions likely to be raised by the new reduced rate.

A couple of key cases highlight some of the problems.

CHILD CAR SEATS

If you hire a car you pay VAT on the supply at the standard rate of 20%; but if you hire a child seat as well, should you pay this full rate on the supply or the special 5% VAT rate for the supply of a child car seat?

The VAT treatment depends on whether:

- The car hire company has made a single supply of a car with a car seat, in which case, 20% VAT should be charged on the entire supply; or
- The car hire company has made two separate supplies of the car and the car seat, in which case 5% VAT should be charged for the car seat hire.

The transaction is treated as a single supply if it

is all one main supply and the other supplies are just incidental. In this case, the decision was that the supply of a child car seat was an optional extra with a separate cost and was therefore an economically distinct supply and the 5% rate applied.

ICE SKATES FOR A CHILD

So what is the difference between hiring a child car seat and hiring skates for a child at an ice rink? In this case, the skate hire would be zero-rated if it is treated as a separate supply.

The First-Tier Tribunal in this case felt that a customer was paying for two separate benefits, but the Upper Tribunal remitted the case back to them for reconsideration. The Upper Tribunal said that the supply should be looked at from the perspective of just those customers opting for the “skate hire and admission” package, which would make the skate hire incidental to the main supply of admission.

HOSPITALITY SECTOR

The reduced standard VAT rate of 5% applies from 15 July 2020 until 31 March 2021. This rate applies to food and non-alcoholic drinks, but not alcohol. Any mixed supplies are likely to be separate supplies. For example, a fixed price meal and wine offer will mean apportioning the price between the meal and the wine.

As ever with VAT, expert advice may be required to disentangle the detail.

“A single supply describes one main supply, with other supplies just incidental.”





ROUND UP

News in Brief...

Making Tax Digital timeline

Making tax digital (MTD) for VAT currently covers businesses with a turnover above the VAT threshold. From April 2022, the VAT filing requirements will apply regardless of turnover. Then, from April 2023, MTD will apply to all self-assessment taxpayers with business or property income exceeding £10,000.

Vehicles with crew cabs are cars

The Court of Appeal has ruled that three vans modified with a second row of seats behind the driver are cars for the purpose of benefit in kind charges. The Court found that the vans had been converted into multi-purpose vehicles, and were no longer primarily suitable for carrying goods.

Personal pension retirement age

The government has confirmed that the minimum age for drawing a personal pension is to rise from 55 to 57 in 2028, which will affect anyone who is currently 47 or under. The change was originally announced in 2014 and is now due to become legislation.

TAX

Reliefs and retained profits

Could retaining profits in your trading company to avoid higher rates of income tax close off other beneficial tax reliefs?

There's nothing wrong with the strategy of retaining profits in a company in the short term, but you need to be aware of how cash, investments and rental property on your company balance sheet can impact on the longer term availability of tax reliefs, especially if they are much more valuable than the company's other assets.

But first a warning: this is a very complex area, and professional advice is essential. In some cases, it may be possible to rectify an imbalance so that you qualify for a particular relief.

CAPITAL GAINS TAX RELIEFS

Two major capital gains tax (CGT) reliefs may be available: business asset disposal relief on the disposal of your shareholding, and also holdover relief if you gift your shares.

Non-trading activities must not be 'substantial', meaning that they should not normally amount to more than 20% of the value of the company's total activities or assets. However, HMRC applies this test 'in the round'. So even though cash balances or rental property may dominate the balance sheet, the test might be met based on the proportion of:

- investment income;
- non-trade related expenditure; and
- time spent on non-trading activities.

Your actual situation could be much more complicated than this. Some cash balances

could be left out of the equation if they are deemed necessary for future trading purposes, rather than being surplus to requirements. Investments or rental property can mean holdover relief is not available.

IHT BUSINESS PROPERTY RELIEF

Access to this relief is dependent on establishing that your company is not mainly an investment company, with 'mainly' in this context meaning more than 50% – so easier to meet than the CGT 80% trading hurdle. An 'in the round' approach again allows more leeway. Relevant factors to consider include:

- respective ratios of asset values, profit and turnover;
- time spent; and
- overall context of the business.



Difficulties can arise because relief is restricted where there are 'excepted assets' on your company's balance sheet. These are assets not used wholly or mainly for business purposes, with a particular problem being a large surplus cash balance.

Holding investments or rental property, rather than cash, should get around the excepted asset issue, provided the 50% test is still met. However, this will then jeopardise holdover relief, so you will need to decide which relief is likely to be more beneficial in the future.

As always with long-term tax planning, future availability of reliefs can change, particularly over the next few years as the government struggles to cover the Covid-19 shortfall.

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