

Taxation of Coronavirus support payments

(Lecture B1208 – 15.37 minutes)

Finance Bill 2020 includes provisions relating to the taxation of coronavirus support payments and the potential penalty regime. There was a short period of consultation following publication of the draft clauses and some significant changes made.

Establishing taxability

The first part of the legislation establishes that all payments under the relevant schemes are taxable.

The term 'coronavirus support payment' covers any payment made at any time under any of the following schemes:

- The coronavirus job retention scheme;
- The self-employment income support scheme;
- Any scheme that is subject to a direction under s76 Coronavirus Act 2020 (which is a very short piece of legislation which basically says that HMRC will have whatever functions relating to coronavirus are given to it by HM Treasury). This means any new scheme of support that HMRC are administering will automatically come within these provisions;
- The coronavirus statutory sick pay rebate scheme;
- A coronavirus business support grant scheme – meaning any arrangement under which a public authority makes grants to businesses to support them during the pandemic. The legislation gives examples of the small business grant fund, the retail, hospitality and leisure grant fund and local authority discretion grants fund as well as their equivalents in Scotland, Wales and Northern Ireland;
- Any scheme specified as being included within subsequent secondary legislation.

All such payments made which are referable to a business will be treated as a revenue receipt of income tax or corporation tax purposes in calculating the profits of the business. If the payment is referable to more than one business, it is allocated on a just and reasonable basis. Business can mean trade, UK or overseas property business and business consisting wholly or partly of making investments.

If the business has ceased the receipt can be treated as a post-cessation receipt. Relevant expenses (i.e. those that would have been deductible against business income) can be deducted from those amounts but the legislation specifically precludes the deduction of costs arising directly or indirectly from the person ceasing to carry on the business.

If no business is carried on, then the whole amount of the support payment is taxable as other income. It seems unlikely that this would apply but it is included to cover all bases from HMRC's perspective.

For payments under an employment-related scheme, the person who is taxable is the person who is entitled to the payment as an employer even if they are not the employer of the relevant employees for any other purpose. For example, if an agency has furloughed staff and received payments under the job retention scheme, they are the deemed employer of those staff even if they are not actually an employer from an employment law perspective. Other workers such as those caught by the public sector IR35 rules were also eligible to be furloughed and would fall into the same category.

For payments under the SEISS, the payment is referable to the business of the individual to whom the payment relates. The whole amount will be treated as profits of 2020/21 regardless of whether it falls within the relevant accounts. This will be relevant for businesses with accounting periods ending early in the tax year since the receipt might fall into the 2021/22 basis period. You cannot deduct the trading allowance or property allowance from a support payment.

Where a payment is made to a partner in a partnership and retained in full by that partner, then it is not treated as a receipt of the partnership but is just added as a separate exercise the partner's share for 2020/21. Effectively you prepare accounts within inclusion of the SEISS, allocate the profits and then add the SEISS to the individual partner. This is likely to be relevant where partnerships have some individuals who qualify and some who do not.

Payments relating to mutual activities of a business carrying on a mutual trade will not be taxable.

Support payments are also to be ignored when calculating:

- Incoming resources limits for charitable exemptions and charitable companies;
- Income conditions for community amateur sports clubs.

No deduction can be made for the trading allowance from support payments.

If an employment-related support payment is not brought into account by the person entitled to the payment as employer (presumably because they do not relate to their business) but another person is claiming a deduction for those costs, the employer will be subject to tax on those payments.

Penalising those who have claimed incorrectly

There have been reports in the press over the last couple of days of the first arrest for fraudulent claims associated with the job retention scheme so it is clear that HMRC will be pursuing the most serious cases with criminal charges. However, there is a secondary financial regime for others.

There is a tax charge if the recipient is not entitled to the amount they have received. This does not apply to the business support grant scheme or the SSP rebate scheme so it is primarily relating to the job retention scheme and the self-employed income support scheme.

The legislation states that a recipient not being entitled to the amount they receive includes someone ceasing to be entitled because of change of circumstances or because they do not pay the costs that the scheme was supported to reimburse i.e. they do not pay the money over to the employee.

It is hard to think of examples of situations where a change of circumstances might demonstrate that you are no longer eligible for the grant. The most obvious example might be for the SEISS. You claim the second payment assuming your business is going to be suppressed during the period from 14 July but then you have an outstanding trading period. The SEISS are really the only grants that have been claimed in advance.

The tax charge is 100% of the support payment the person is not entitled to and has not yet been repaid. It arises at the point at which the person ceases to be entitled to the payment where they did have eligibility when the claimed or when they receive it in all other cases.

It is an income tax charge, even where it arises to a company.

If this tax charge arises, the receipt is not taxable under the provisions outlined above. No expenses or other deductions are allowed from the amount which is subject to income tax.

If a partner in a partnership has received the payment personally and it has not been distributed amongst the partners, then it is the individual partner who is liable and not the firm. If it is the liability of the firm, then all partners are joint and severally liable for the charge.

HMRC can issue an assessment to collect any tax due with normal time limits applying (so 4/6/20 years depending on offence).

The normal compliance regime provisions in terms of the use of information and inspection powers can be used to check an SEISS or CJRS claim to ensure it has not been overpaid.

Penalties are also levied under the failure to notify chargeability provisions. HMRC must be notified of the incorrect claim on the later of:

- 90 days after Royal Assent;
- 90 days after the day on which the income tax became chargeable.

This is treated as met by a partnership if any partner complies with this.

If chargeability is not notified, then the consequent penalties become due and payable. However, the penalty provisions are amended so that they only apply if the person knew at the point at which the income tax became chargeable that they were not entitled to the amount of the payment. If that is the case, then the offence will be deliberate and concealed. Effectively the penalty regime is only going to apply to someone who makes the initial claim knowing they do not qualify. The penalty for a deliberate and concealed offence is 100% of the potential lost revenue.

The potential lost revenue is the amount of income tax that is due and payable.

Where partnerships are involved, the basic provisions are amended to make sure that the penalty can be levied. In particular, anything that one partner knows is treated as known by all partners.

The provisions within FB2020 that extend liability to officers of insolvent companies in certain circumstances can also apply to these payments.

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