

Business tax round up

(Lecture B1226 – 26.07 minutes)

Extended SEISS: Grants 3 and 4

On 24 November 2020, HMRC published its updated guidance relating to the SEISS Grant 3, with the claim process due to go live on 30 November 2020. HMRC will stagger the exact go live date for individual traders, in the same way that they did for the earlier grants.

Anyone making a claim must do so on or before 29 January 2021.

The guidance confirms that only self-employed individuals who were eligible for SEISS grants 1 and 2 are potentially eligible for the extended SEISS grant 3. The scheme has not been extended to those that were previously excluded.

SEISS Grant 3 will be calculated as 80% of average monthly trading profits, paid out in a single instalment covering 3 months' worth of profits, and capped at £7,500.

To be eligible individuals or partners must have traded in both 2018/19 and 2019/20 and must either:

- be currently trading but impacted by reduced demand due to COVID-19;
- have been trading but are temporarily unable to do so due to COVID-19

Being temporarily unable to trade could be due to government restrictions or because an individual has tested positive for COVID-19 or is required to self-isolate. However, HMRC has specifically stated that where an individual is required to self isolate on returning from abroad, this does not count.

Further, HMRC states that no claim should be made where the only impact on a business is increased costs.

Reasonably believe a significant reduction in profits

Further, traders must declare that they intend to continue to trade and that they reasonably believe there will be a significant reduction in trading profits due to reduced business activity, capacity or demand or inability to trade due to COVID-19 during the period 1 November to 29 January 2021. However, HMRC goes on to say:

“ Before you make a claim, you must decide if the impact on your business will cause a significant reduction in your trading profits for the tax year you report them in.”

So it seems that the significant reduction test applies to the three months of the claim as well as the tax year that those reduced profits are reported. For a trader with a year to 30 April 2020, they will need to consider a significant reduction in the 3 months to 29 January 2021 as well as the profits for the year to 30 April 2021.

Further HMRC state that:

“You should wait until you have a reasonable belief that your trading profits are going to be significantly reduced, before you make your claim.”

Previously, traders who were uncertain of the effect of COVID-19 may have claimed in advance and then looked to repay the grant if trading had been better than expected. It seems now the instruction is to wait to make a claim until you have a reasonable belief.

Useful examples

HMRC’s guidance includes some useful examples to help taxpayers decide where no reasonable belief exists, some of which are reproduced below.

1. A cafe owner has fewer customers due to government restrictions on households mixing, which initially reduces her takings but she increases her prices to compensate;
2. An electrician is still trading but has had increased costs due to buying masks, cleaning supplies and screens. HMRC state that the electrician is not eligible for the third grant because increased costs were the only impact on the business and no customers have been lost;
3. A dentist returns from a holiday abroad and has to self-isolate for 14 days due to quarantine rules. HMRC specifically exclude the scenario where reduced demand is due to self-isolation after foreign travel is not included in the eligibility criteria;
4. The client of a dog walker cancels a contract due to coronavirus. The dog walker could but chooses not to look for additional work to replace the contract. This means her business activity and her trading profits are reduced because she chooses not to replace the contract and not because of coronavirus. She is not eligible for the third grant;
5. A IT consultant has other income from renting property. He has made losses on renting due to renovation costs. This is not related to his trading profits from his IT consultancy service. As his consultancy business has not been affected due to coronavirus, he is not eligible for the third grant.

SEISS Grant 4

HMRC has confirmed that there will be a fourth grant covering February 2021 to April 2021, with further details, including the level of the fourth grant in due course.

<https://www.gov.uk/guidance/claim-a-grant-through-the-coronavirus-covid-19-self-employment-income-support-scheme>

<https://www.gov.uk/guidance/how-your-trading-conditions-affect-your-eligibility-for-the-self-employment-income-support-scheme#examples>

AIA £1 million limit extended

From 1 January 2021, the AIA was due to revert back to £200,000.

However, on 12 November 2020, the Government announced that the current £1 million limit is now being extended for a year and so will run until 31 December 2021.

The means that until this date, businesses can continue to claim a 100% tax deduction for the accounting period in which they purchase qualifying plant and machinery, up to the £1 million limit.

<https://www.gov.uk/government/news/government-extends-1-million-tax-break-to-stimulate-investment-in-uk-manufacturing>

Diver's fitness training

Summary – A diver's fitness training expenses were incurred wholly and exclusively for the purposes of his trade and so allowable in arriving at his taxable profits.

Robert Osborne worked as a self-employed saturation (deep-sea) diver, working at 150m depths, spending days or weeks in compressed chambers of a vessel and working at depth.

Such diving is dangerous, and fatalities occur if divers are not fit. As a result, the industry and contractors require divers to pass strict fitness tests. Robert Osborne claimed his training expenses as deductible expenses in arriving at his taxable profits, arguing that they were wholly and exclusively for the purposes of his trade. He included travel costs as part of his training expenses as he had been advised to run on soft soil or sand and so needed to travel to appropriate places.

HMRC argued that there was a dual purpose to his training, as fitness is a human need.

Robert Osborne appealed.

Decision

The First Tier Tribunal accepted that saturation diving was dangerous and that divers were required to meet a strict fitness level. The Tribunal concluded that his only reason for training, in the way that he did, was to ensure that his cardiovascular system and other muscular fitness enabled him to continue working as a diver.

There was no reason to believe that he would undertake such training for personal fitness. Training at that level was essential to allow him to practice his trade, and to continue to do so as he grew older. The Tribunal concluded that any improvement in his fitness was merely incidental.

The appeal was allowed.

Robert John Osborne v HMRC (TC07851)

Accommodation and travel disallowed

Summary – Travel and accommodation for a sole trader who lived in Scotland but took work in Swindon was disallowed.

Hamish Taylor had been a self-employed subcontractor for many years and was registered under the Construction Industry Scheme.

Although his home was in Scotland, in 2016/17 he had undertaken a number of contracts in Swindon where the rates of pay were significantly higher. While working on these contracts, he had stayed at a hotel and claimed the costs of accommodation and travel as deductible expenses, but not his meals. He argued that travel to obtain the better pay in Swindon was a business decision. He had paid for basic accommodation solely to allow him to work there. He maintained that the expenses were wholly and exclusively incurred in the course of his self-employment.

On 6 April 2018 HMRC opened an enquiry into his 2016/17 Self Assessment return. Rejecting his claim for the travel and accommodation expenses, HMRC contended that he had chosen Swindon as his base for undertaking work at various sites, but the cost of travel between his home in Scotland and his work in Swindon were not allowable expenses, because they were not wholly and exclusively incurred for business purposes. Certain other travel and subsistence claims were however allowed.

HMRC argued Hamish Taylor worked out of Swindon, not his home address in Scotland, so that travel and accommodation between Scotland and Swindon was not wholly and exclusively incurred as required by s34 ITTOIA 2005. He had chosen Swindon as a convenient base for his work at different sites. HMRC referred to the decision in *Horton v Young*, where the judge had given the example of a commercial traveller living in London whose “patch” was Cornwall. The judge had stated that in this example, the cost of travel between London and Cornwall would not be allowable even if the occupation were a travelling one.

Hamish Taylor appealed.

Decision

The First Tier Tribunal acknowledged that Hamish Taylor would never have been in Swindon except in the course of earning his living. His hotel appeared to have been chosen for economy rather than comfort and he made no claim for his evening meals.

However, the Tribunal concluded that the travel and accommodation costs were not incurred wholly and exclusively for the purposes of his trade as Hamish Taylor was able to work near his home in Scotland, though at a lesser rate. Staying in Swindon for some 165 nights during the tax year meant that his base for the work on a variety of subcontracts was in Swindon. His expenses were effectively general commuting costs for his work in Swindon and so disallowed. Had he gone to Swindon for a specific contract, the travel and accommodation costs for that would have been deductible.

The appeal was dismissed.

Mr Hamish Taylor v HMRC (TC07893)

Extended notification when opting to tax

Under normal circumstances where a taxpayer opts to tax land and buildings, they are required to notify HMRC within 30 days by either:

- printing and sending the notification, signed by an authorised person within the business;
- emailing a scanned copy of the signed notification.

Due to COVID-19, HMRC has temporarily extended the time limit to 90 days from the date the decision to opt was made.

This applies to decisions made between 15 February 2020 and 31 March 2021.

The notification can be emailed to optiontotaxnationalunit@hmrc.gov.uk using an electronic signature together with evidence that the signature is from a person authorised to make the option on behalf of the business.

If notifying as an agent, the email must include proof that the signature is from a person authorised to make the option on behalf of the business and that authority has been granted by the business to use the electronic signature.

<https://www.gov.uk/guidance/changes-to-notifying-an-option-to-tax-land-and-buildings-during-coronavirus-covid-19>

Finger Licking Chicken registration

Summary – Both companies should have been registered for VAT and HMRC's best judgement assessments were valid.

Withington KFC Services Ltd owned and operated a takeaway business known as 'Finger Licking Chicken'. In June 2016, the business was transferred as a going concern (TOGC) to NNS Services Ltd. Neither company was registered for VAT.

S.49 VATA 1994 states that when the purchaser acquires the trade and assets of a taxable person then they shall inherit the seller's taxable turnover for registration purposes. Where the seller is:

- VAT registered with taxable income greater than £85,000, the buyer would have a compulsory registration obligation at the date of the purchase, which in turn triggers the TOGC treatment for the transfer;
- not registered for VAT as their taxable income is less than £85,000 the buyer will have a fresh start for registration purposes.

NNS Services Limited believed that they were buying from a non-registered trader.

Following an unannounced visit in August 2016 and a number of undercover purchases, HMRC decided to investigate further. HMRC calculated NNS Services Ltd's turnover on a best judgment basis and concluded that the company should have been registered for VAT as the company was trading well above the £85,000 registration threshold.

Further, HMRC back-calculated the turnover into the period of Withington KFC Services Ltd's ownership and concluded that Withington KFC should have been compulsorily registered for VAT when they owned the business. This in turn meant that under s.49 VATA 1994, NNS should have been registered on the date of the TOGC.

Having done so, HMRC formed the view that both companies should have been registered for VAT but with Withington KFC Services Ltd having now ceased to trade, this company was Liable No Longer Liable. HMRC issued a 'best judgement' assessment against NNS Services Ltd back-calculated to the period of Withington KFC Services Ltd's operation of the business. HMRC also issued a personal liability notice to the director of Withington for the failure to notify penalty of £33,000, calculated as 63% of the VAT due. This was not appealed.

Decision

The First Tier Tribunal concluded that NNS Services Ltd had produced no evidence to back up their argument. There was nothing to differentiate sales of different types of food, or food from drink and no till records, or meal slips provided. When the company produced its daily takings schedules, the Tribunal questioned their reliability stating that these were "far too neat and tidy to have been compiled day-on-day... no scribbles, crossings-out or alterations." They were not a proper record of takings. The First Tier Tribunal was satisfied with HMRC's calculations which were sufficient for them to conclude that NNS Services Ltd takings required the company to be registered for VAT. HMRC had used best judgment in reaching the figures assessed.

Despite no sale contract or legal documents, looking at the substance of the 'sale', the First Tier Tribunal was satisfied that the trade had always been operating above the VAT registration thresholds and that there had been a TOGC. The business was the same business, using the same premises, equipment, front of house set-up and staff. The business traded under the same name. The Tribunal concluded that there was nothing to indicate that it was under new management or that its offering was changing to any significant degree.

As a transfer of business as a going concern, HMRC's back-calculation to the period of Withington's ownership was valid. Withington should have been registered to the date of the TOGC and NNS should have been registered from the date of the TOGC.

Once the First Tier Tribunal had found in HMRC's favour, the personal liability notice took effect. HMRC's guidance states that an officer or officers of a company may be personally liable to pay all or part of the company penalty where:

- a company is liable to a penalty for a deliberate wrongdoing; and
- the wrong doing is attributable to the deliberate action of an officer or officers of the company.

Before you can consider charging a company officer penalty both of the two conditions above and one of the two circumstances below must also apply

1. the officer gained or attempted to gain personally from the wrongdoing, or
2. the company is insolvent or likely to become insolvent.

Following the sale, Withington KFC no longer existed and so the unpaid VAT relating to Withington is likely to have never been paid but the £33,000 assessed under the PLN was payable by the former director.

The appeal was dismissed.

Withington KFC Services Ltd; NNS Services Ltd v HMRC (TC07801)

Roller blinds installed by a developer

Summary – Roller blinds installed in new dwellings were a permanent part of the building, qualifying as building materials ordinarily incorporated in a building and the 'builders block' did not apply.

Wickford Development Co Ltd is a UK VAT-registered property development company. The company sells finished homes, with no specification changes allowed by buyers. The company includes blinds in all properties, irrespective of the property size or style. At the time of the hearing, the company had built 1,000 homes at a site in Essex, with a further 600 left to be developed and sold.

Group 5, Schedule 8 VATA 1994 zero rates the first grant of a major interest in a newly constructed dwelling and this in turn allows input tax recovery on related costs unless blocked by way of SI 1992/3222. SI 1992/3222 (6) blocks the recovery of input tax on building materials not ordinarily incorporated by builders into that dwelling.

This case considered whether the supply and fit of blinds that were installed as standard in all Wickford properties were building materials ordinarily incorporated into new dwellings. HMRC stuck to their view in *John Price v HMRC* [2010] that blinds were akin to curtains and therefore blocked from input tax recovery.

Following the *John Price* decision, HMRC released Customs Brief 02/11, which stated:

“HMRC's view remains unchanged in that roller blinds (and other 'window furniture') are not 'building materials' as defined and will not be changing its policy. The Tribunal chairman did not hear any evidence on the point of what is and what is not a 'building material' for VAT purposes but reached his conclusion as a matter of judicial notice, that is, as a common sense fact.

Further, HMRC stated:

“Given the small amount of VAT at stake in this particular case, HMRC will not be appealing this decision further.”

Decision

The First Tier Tribunal concluded that the supply and installation of the blinds did qualify as building materials as they were fitted individually, and to remove them would cause damage to both the walls and window frames. The Tribunal considered that they were a permanent part of the building and not merely part of the furniture. They were no different to curtain poles that HMRC accept as being ordinarily incorporated and so input tax was recoverable on the blinds.

Further, the Tribunal confirmed that HMRC's view, expressed in Customs Brief 02/11, was incorrect. It will be interesting to see whether, having now lost twice at the First Tier on the same issue, whether HMRC will appeal or now accept the First Tier's decision.

Wickford Development Co Ltd v HMRC (TC07864)

Financial services “specified supply” rules

Currently, a UK business providing certain specified supplies to non-EU customers are entitled to input VAT recovery on the costs associated with those supplies under the VAT (Input Tax) (Specified Supplies) Order 1999 (the Specified Services Order).

These specified supplies include financial services such as banking and insurance.

The Chancellor, Rishi Sunak, has announced that from 1 January 2021, when the UK is no longer a member of the EU, these ‘specified supplies’ rules are being extended to include sales to non-UK customers and so will include export services to the EU.

Richard Asquith, VP Global Indirect Tax at Avalara has stated:

“The UK measure will give a tax subsidy to the import UK sector. This comes at a time with the UK has lost its Financial Services ‘passport rights’ into the EU market, and will likely not win ‘equivalence’ with EU rules. That means a loss of direct rights to sell into the EU.”

<https://www.forbes.com/sites/robertmarchant/2020/11/02/the-uk-vat-implications-of-brex-it-for-services-businesses/?sh=1de2b54d3895>