

Furlough fraud (Lecture P1290 – 11.50 minutes)

There has been increased media coverage recently of “furlough fraud”. This session considers what furlough fraud is, the action being taken by HMRC to address the issue, and provides practical considerations for advisers. The session will also be of interest to advisers who are reviewing errors made by their clients.

What is the furlough scheme?

Most advisers will be aware of The Coronavirus Job Retention Scheme (CJRS), also known as the furlough scheme. The scheme was introduced by the government in March 2020 to assist businesses in retaining employees during the COVID-19 pandemic. The scheme assisted employers by paying a percentage of the wages for furloughed employees, with the intention of avoiding the need for redundancies. One of the key requirements of the scheme was that furloughed employees were not allowed to work for their employer. The scheme ceased on 30 September 2021. Advisers should not that legislation regarding the taxation of Covid-19 support payments is at Schedule 16, Finance Act 2020.

What is furlough fraud?

Furlough fraud is where an employer deliberately made an excessive claim under the furlough scheme.

There were numerous ways in which employers could commit furlough fraud, including the following:

- Making a claim under the scheme for a non-existent employee;
- Asking an employee to return to work as a “volunteer” without pay;
- Not paying employees the full amount received from HMRC;
- Placing an employee on furlough but requiring them to continue to work as normal
- Incorrectly reporting the hours an employee has worked, to increase the amount recoverable

Mistakes were made, as employers, and their advisers, had to get to grips with the new rules in a short period of time. HMRC recognised this, and there was a 90-day correction period. Where a genuine error has been made, and that can be demonstrated, the employer may only be required to repay the overpayment of furlough monies. If an overclaim is rectified outside the correction period, a penalty may apply. It is important to distinguish whether a genuine error has been made, or there has been fraud, before making the approach to HMRC .

How is HMRC tackling furlough fraud?

The furlough scheme, as with the other Covid support schemes, was introduced quickly in response to the risk to jobs. Although the scheme was designed to minimise fraud and error, it was inevitable that payments would be made erroneously. Various changes have been made to the scheme, since its introduction, to reduce the risk of fraud and error. Although some claims were blocked from

payment upfront, there has been a significant level of payments which were made as a consequence of fraud or non-deliberate errors.

There have been numerous figures published of the level of fraudulent or erroneous claims. HMRC's annual report for 2020/21 estimates that £5.2 billion of the £60 billion paid out during that period was because of fraud or paid out in error. The largest loss is believed to be due to what is described as "opportunistic fraud" (£3.64 billion), with £1.37 billion arising due to errors, and the balance (£170 million) because of organised crime.

The government has invested over £100 million in a HMRC Taxpayer Protection Taskforce, with 1,265 staff, to tackle the problem. HMRC have reported that the unit is expected to recover £1 billion from fraudulent or incorrect payments from the various Covid support schemes over the next two years. There are understood to be 23,000 ongoing investigations (across the Covid support schemes), with that number expected to reach around 30,000.

As noted above, in the early stage of the furlough scheme, HMRC generally took a light touch when dealing with erroneous claims. A Covid fraud hotline was established, and employees encouraged to report suspected fraudulent activity. There have been, approximately, 30,000 calls to the hotline, giving HMRC intelligence to follow-up on. HMRC also has its own data (including from the Eat Out to Help Out Scheme), to add to its risk profiling and assessments. HMRC can be expected to use its full range of powers, covering criminal and civil options, to investigate cases of suspected furlough fraud.

HMRC has recently updated its guidance on the taxation of Covid-19 support payments (<https://www.gov.uk/guidance/overview-of-joint-and-several-liability-notice-for-the-taxation-of-coronavirus-covid-19-support-payments>). Advisers should note that HMRC can collect wrongly claimed furlough payments from directors.

Criminal investigations

A small number of HMRC's investigations into suspected furlough fraud will result in the use of their criminal powers. That is the same approach adopted when investigating tax fraud. HMRC does not have sufficient resources to investigate all suspected fraud cases using its criminal powers. Criminal investigation will be used sparingly, in the most suitable cases, to send out a deterrent message, and encourage others to come forward voluntarily. Advisers should note that the strict corporate liability offences may be relevant to furlough fraud.

The first arrest for alleged furlough fraud was in July 2020, involving a suspected £495,000 fraud. It is understood that the number of arrests has now increased to 13, some relating to suspected frauds involving several million pounds.

Civil enquiries

HMRC will use its full range of civil powers, including compliance checks, and the Contractual Disclosure Facility (CDF), for cases where HMRC suspect fraud but do not use their criminal investigation powers, when investigating furlough claims.

In addition to using its formal procedures, HMRC are making heavy use of "nudge letters", to encourage offenders to come forward voluntarily. HMRC has issued thousands of nudge letters targeting users of the furlough scheme, and that policy is expected to continue. Nudge letters have been covered in a separate session, and advisers are recommended to access that session, if they have not already done so.

Penalties can be applied by HMRC where there has been an erroneous claim under the furlough scheme. The penalty can be up to 100% of the wrong claim, but the amount charged will depend on the circumstances, and mitigating factors. In addition to a penalty, employers can be subject to non-financial sanctions, including “naming and shaming”.

Practical considerations

Advisers are encouraged to review furlough claims made by clients. Where errors are discovered, whether through a genuine mistake or dishonesty, advisers they consider the best route to make the disclosure to HMRC. This should include consideration of the Contractual Disclosure Facility where fraud is suspected or admitted by the client. That process has been covered in a separate session, and advisers should refer to that, if they have not already viewed the session. It is recommended that advisers seek specialist advice where they are not familiar with the Contractual Disclosure Facility, before making an approach to HMRC. Although the number of criminal investigations will continue to be used to tackle only a very small number of suspected fraudulent claims, advisers should be aware that it remains a possibility.

It is important to ensure that clients who have used the scheme have retained the relevant records and evidence and continue to do so. This will enable the appropriate voluntary disclosure to be made, or the appropriate responses to be sent to HMRC in the event of any queries being raised by the tax authority.

Contributed by Phil Berwick, Director at Berwick Tax