

Business tax round up

(Lecture B1196 – 26.09 minutes)

Coronavirus Bounce Back Loan

This scheme was launched on 4 May 2020 and will help small and medium-sized UK businesses negatively affected by COVID-19 apply for loans of between £2,000 and £50,000, with loan terms of up to six years.

The amount of the loan cannot exceed 25% of turnover.

The scheme will be delivered through a network of accredited lenders with the government guaranteeing 100% of the loan. Under the scheme:

- There will be no fees or interest charged during the first year, nor will any repayments be due;
- After the first year, interest will be charged at an agreed rate of 2.5%;
- Lenders are not permitted to take personal guarantees or take recovery action over a borrower's personal assets (such as their main home or personal vehicle).

To apply

In the first instance, businesses should apply to their own bank online but may also consider approaching other lenders if they are unable to access the finance they require. The business will need to fill in a short application form online, self-certifying that the business is eligible for a loan. If eligible, the bank will carry out standard customer fraud, Anti-Money Laundering and Know Your Customer checks.

Who is eligible?

The business will be required to self-declare to the lender that it:

- has been impacted by the coronavirus (COVID-19) pandemic;
- was not a business in difficulty at 31 December 2019 (if it was, the business must confirm their business complies with additional state aid restrictions under de minimis state aid rules);
- is engaged in trading or commercial activity in the UK and was established by 1 March 2020;
- is not using the Coronavirus Business Interruption Loan Scheme, the Coronavirus Large Business Interruption Loan Scheme or the Bank of England's Covid Corporate Financing Facility Scheme, unless the Bounce Back Loan refinances 100%;
- is not in bankruptcy or liquidation or undergoing debt restructuring at the time it submits its application for finance;
- derives more than 50% of its income from its trading activity (this requirement does not apply to charities or further-education colleges);

Bounce Back Loans are available to businesses in all sectors, except the following:

- Credit institutions (within the remit of the Bank Recovery and Resolution Directive);
- Insurance companies;
- Public-sector organisations;
- State-funded primary and secondary schools.

*<https://www.gov.uk/guidance/apply-for-a-coronavirus-bounce-back-loan>
<https://www.british-business-bank.co.uk/ourpartners/coronavirus-business-interruption-loan-schemes/bounce-back-loans/for-businesses-and-advisors/>*

Top-up to local business grant funds

On 2nd May, the government announced a discretionary fund for local authorities to help small businesses with ongoing fixed property-related costs. Local authorities are being asked to prioritise businesses in shared spaces, regular market traders, small charity properties that would meet the criteria for Small Business Rates Relief, and bed and breakfasts that pay council tax rather than business rates. But local authorities may choose to make payments to other businesses based on local economic need.

To qualify, businesses must:

- have less than 50 employees;
- demonstrate that they have seen a significant drop of income due to COVID-19.

There will be three tiers of payment:

1. Maximum £25,000;
2. £10,000 grants;
3. Local authorities will have discretion to make payments of any amount under £10,000.

Guidance will be provided to local authorities and It will be for councils to adapt the scheme to local circumstances.

<https://www.gov.uk/government/news/top-up-to-local-business-grant-funds-scheme>

Self Employed Income Support Scheme (SEISS) update

As we reported last month, the scheme allows the self employed and individual partners in a partnership to claim a taxable grant of 80% of their average monthly trading profits, paid out in a single instalment covering 3 months, but capped at £7,500.

Go live for this scheme was 13th May and HMRC updated its guidance on the scheme several times in early May before it went live.

Specific circumstances

On 1 May 2020, HMRC published separate guidance for some very specific circumstances covering:

- Returns that are late, amended or under enquiry
- Partnerships;
- Parental leave
- Loan charge cases
- Farmer's averaging relief
- Non-residents and those who claim the remittance basis
- Those who are above the state aid limits

<https://www.gov.uk/guidance/how-different-circumstances-affect-the-self-employment-income-support-scheme>

What is meant by 'adversely affected by coronavirus'?

Remember, one of the conditions to be eligible for SEISS is that a business must be 'adversely affected by coronavirus'. In its updated guidance, HMRC provided some useful examples of what is meant by this:

- Individual who was unable to work due to shielding, self-isolating, being on sick leave or COVID-19 caring responsibilities;
- Individual who had to scale down or temporarily stop trading because an interrupted supply chain, lack of customers or staff.

Taxpayers should keep any evidence that their business has been adversely affected by coronavirus such as:

- business accounts showing a reduction in turnover;
- confirmation of any coronavirus-related business loans you have received;
- dates your business had to close due to lockdown restrictions;
- dates you or your staff were unable to work due to coronavirus symptoms, shielding or caring responsibilities due to school closures.

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

Preparing for launch

At the beginning of May, Tax agents and accountants were contacted by HMRC updating them on what was happening with the Self Employed Income Support Scheme. HMRC stated that clients would be required to complete the claim themselves but have asked

that agents guide their clients through the eligibility criteria and the process for checking and claiming.

During the week commencing 4 May 2020, based on returns that taxpayers had filed over the last three years, HMRC contacted taxpayers that they believed may be eligible to apply for the grant by email, SMS message or letter. Each taxpayer should have received one form of contact, the format being determined by the information that HMRC held on their system. It is likely that a good number of taxpayers may not have received this notification, especially if they have been self-isolating at a different address to where they usually reside or perhaps have changed address or mobile number but have not updated their contact details with HMRC.

HMRC provided a simple online eligibility checker at <https://www.tax.service.gov.uk/self-employment-support/enter-unique-taxpayer-reference> to help taxpayers and their agents confirm whether they were eligible for the grant. All that was needed was the taxpayer's UTR and national insurance number. No income figures were needed as HMRC's system could draw on tax return information filed using just the UTR and NI number for each person. Taxpayers were told immediately if they were eligible and were asked to provide an email address and optional mobile number for further correspondence including a reminder of when to apply.

The application process went live on 13 May 2020 but not all taxpayers could access the system at once. Having established that they were eligible, taxpayers were allocated their application date at some point between 13 and 18 May.

The application process

On their designated time and date, taxpayers logged in to their government gateway account, or selected the option to create an account, to complete the application process.

Once logged in, taxpayers were asked to confirm that they:

- Had traded in 2019/20;
- Intend to trade in 2020/21;
- Have been adversely affected.

Taxpayers were then told what their total grant would be, given a calculation of how HMRC had calculated this figure, with the average trading profits figure used clearly stated.

HMRC recommended that even if the taxpayer disagreed with the amount shown, they should complete the claim process to guarantee at least some money in 6 days time. At the end of the claim process they were advised what action they should take to have their grant reviewed.

Taxpayers were required to submit a declaration confirming that their business had been adversely affected, that they had provided accurate information and that if information changed, they would contact HMRC to amend the claim. They were then advised to print and or save a document detailing the grant awarded, claim reference number, date submitted, averaging and grant calculation, as well as the taxable profits for each year from 2016/17 to 2018/19.

Taxpayers were advised to keep a copy of these records as well as evidence that their business had been adversely affected by coronavirus.

Rejected

There have been reports that some taxpayers have been incorrectly assessed for eligibility by HMRC's tool or that the grant amount has not always been correctly calculated. It is likely that some taxpayers will not have interpreted the rules correctly for example, their self-employment income may not have been more than half of their total taxable income. Maybe they forgot to take into account some pension income or for a period they had been employed, paying tax through the PAYE system. For others their circumstances may be less than straightforward.

Clearly rejected taxpayers should start by checking through all of the SEISS eligibility criteria and may need our help in doing this. If a taxpayer still feels that they have been wrongly rejected, they can ask for the decision to be reviewed online or by phone.

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

SEISS deadline and second grant

On 29 May 2020, the government confirmed that:

- applications for the first grant will close on 13 July 2020;
- a second and final grant will be available from August 2020.

This second grant is not quite as generous as the first, with eligible individuals able to claim a taxable grant of 70% of their average monthly trading profits, paid out in a single instalment covering three months' worth of profit, and capped at £6,570 in total.

The eligibility criteria are unchanged and once again, taxpayers will need to confirm that their business has been adversely affected by COVID-19. To be eligible, a taxpayer does not need to have claimed the first grant.

Additional information on the second grant will be available on GOV.uk on 12 June 2020.

SEISS and newly incorporated companies

The Low Incomes Tax Reform Group has warned owners of newly formed limited companies that it is unlikely they are eligible for the SEISS grant.

Remember, HMRC's eligibility checker confirms that people may be eligible based on the information HMRC holds from tax returns for 2018/19 or earlier. It does not consider later years. For these years, claimants are required to declare they meet the following conditions:

- They traded in the tax year 2019/20;
- They intend to continue to trade in the tax year 2020/21; and
- They carry on a trade that has been affected adversely by COVID-19.

Where a self-employed trader has incorporated in these later years, although they may still be trading and adversely affected by Covid-19, they are no longer self employed and so unlikely to be eligible for the SEISS. They now trade as a company making them ineligible.

<https://www.tax.org.uk/media-centre/press-releases/litrg-press-release-covid-19-grant-warning-new-limited-companies>

Helping struggling companies

As we know, the government has introduced a number support options to help us through the COVID-19 crisis including the Coronavirus Job Retention Scheme, SEISS, the option to defer VAT payments as well as a number of loans and grants that have been made available. But what else can owner managed companies consider doing to improve their cash flow position?

In 'Top talking points' Tolleys has identified a number of areas that could be considered by owner managed business companies including:

- Time to pay arrangements with HMRC;
- Maximising capital allowance claims;
- Surrendering losses in return for R&D tax credits;
- Loss relief claims by carrying back losses 12 months or, if closing down, by claiming terminal loss relief;

More drastic action would require careful consideration of the commercial, tax and legal implications that these actions entail. Among others, Tolleys highlight the following possibilities:

- Reducing debt by waiving loans from shareholders, considering a debt equity swap or taking advantage of the corporate rescue exemption where loans with third parties are released;
- Incentivising staff to stay with their struggling employer by using non-cash arrangements like EMI share options;
- Dividend deferral and cancellations;
- Restructuring to protect profitable parts of the business using a statutory demerger or by selling off the loss-making part through a hive down.

Ultimately there may nothing worth salvaging, leaving no choice but to wind up the business in the most tax efficient way possible;

Tolley 'Top talking points' 6 May 2020

No sideways loss relief for farming losses

Summary –The organic farming business did not pass the 'reasonable expectation of profits' test and so was not run on a commercial basis. Sideways loss relief was denied

In January 1995 Ardeshir Naghshineh bought a farm in Norfolk with about 75 acres of agricultural land. This was a working farm run on a conventional basis. Ardeshir Naghshineh believed that he could obtain premium prices for organic farm produce compared to conventional produce and so decided to convert the farm to organic production. To benefit from economies of scale, over the years he acquired more land until, by 2007, he owned some 438 acres.

Over the years he carried on various different agricultural and non-agricultural activities on the farm, with the activities in question often changing from year to year. He paid his workers extremely well, as he felt that they should be rewarded in a similar way to those employed by his other businesses. This resulted in significantly higher remuneration costs in relation to the farm than might otherwise have been the case.

Following the financial crisis in 2007/08 there was a downturn in the organic produce market and in 2009/10 Ardeshir Naghshineh reverted to conventional farming methods. In addition to his farming activities he also ran a produce box scheme, holiday lets, a farm shop and a micro-brewery.

The farm made losses every year to 2011/12 and Ardeshir Naghshineh claimed sideways loss relief against general income for these losses. The business finally became profitable in the year to 31 March 2013 and subsequent years.

HMRC refused the loss relief claims for 2007/08 to 2011/12 on the basis that sideways loss relief for farming businesses should be denied as he had made losses in each of the previous five tax years (s67 ITA 2007).

At the First Tier Tribunal hearing, an expert had stated that when converting from conventional to organic farming, the first fully organic harvest would not be until 2003 and it would then take another ten years to become profitable. Based on this evidence, the First Tier Tribunal found that a competent organic farmer would not have expected to make a profit during the tax years in question and the appeal was allowed.

HMRC appealed to the Upper Tribunal.

Decision

The Upper Tribunal identified what they believed to be the correct approach to take in applying the reasonable expectation of profits test at s68(3)(b) ITA 2007. Having determined what activities were actually carried out at the beginning of each loss making period (2007/08 to 2011/12 inclusive), how long would a competent farmer in 1995 have expected it would take for those activities to become profitable.

Looking at 2007/08, the first year where relief was denied, Ardeshir Naghshineh 's activities had changed significantly from those back in 1995. By then he was carrying out mixed-use organic farming. So the Upper Tribunal 'artificially' considered when it would have been reasonable to expect profits to arise from his 2007/08 activities if those activities had been carried on in 1995.

Using this approach for 2007/08, together with expert evidence, the Upper Tribunal concluded:

'if the competent farmer had been assumed to be carrying on those activities in 1995, he would reasonably have expected them to become profitable (accepting for this purpose the expert evidence) by the early 2000s... Even if the

competent farmer could reasonably have expected the profitability not to arise until ten years after 1995, that would still have been before the first period of loss under appeal.'

Ardeshir Naghshineh did not meet the reasonable expectation of profit test and sideways relief was not available.

HMRC v Ardeshir Naghshineh [2020] UKUT 0030 (TCC)

No sideways loss relief for LLP

Summary - A non-active partner in an LLP was denied sideways loss relief of £25,000 as he provided no evidence that he was carrying on a trade, commercially or otherwise.

Christopher Grinyer was a member of an LLP and for 2010/11 he:

- reported his share of the LLP's trading loss as £422,312;
- claimed loss relief of £25,000 against general income in that year; and
- carried forward the balance of the loss, £397,312, to future tax years.

There was no dispute that the maximum loss relief claim, if any, against general income in the tax year 2010/11 was £25,000. That was because in that year Christopher Grinyer had not been an active partner and had worked for less than 10 hours per week.

HMRC enquired into his personal tax return but not that of the LLP and later denied the sideways loss relief claim and the balance of carried forward losses. HMRC stated that the LLP was not carrying on a trade, or alternatively, was not carrying on a trade commercially.

Christopher Grinyer argued that HMRC could only deny the sideways loss relief claim on his personal tax return if they had also enquired into the LLP's tax return, which they had not done.

Neither HMRC nor Christopher Grinyer advanced any argument, or provided any evidence, on whether the trade existed and if it existed, whether it was run on a commercial basis.

Decision

The First Tier Tribunal disagreed with Christopher Grinyer confirming that HMRC can enquire into anything contained in his personal tax return. As a result, it was up to Christopher Grinyer to prove that there was a trade and that it was being carried on commercially. With no such evidence provided, the Tribunal dismissed the appeal.

Christopher J Grinyer v HMRC (TC07560)

Zero rating accelerated

Following the decision in *News Corp UK & Ireland Limited v HMRC [2019] UKUT 404 (TCC)*, Budget 2020 announced that VAT on e-publications would be reduced from December 2020. As a result of the outbreak of COVID-19, the date has been brought forward to 1 May 2020.

Zero-rating is limited to electronic versions of books that can be read or looked at. Supplies of audiobooks remain taxable at the standard rate whether supplied in a physical or digital format.

www.gov.uk/guidance/zero-rate-of-vat-for-electronic-publications

Notifying option to tax extended

Notice 742A: Opting to tax land and buildings has been updated to help businesses during the coronavirus outbreak.

Between 15 February and 31 May 2020, the time limit to notify an option to tax land and buildings has been temporarily extended from 30 days to 90 days.

Notifications can be emailed to: optiontotaxnationalunit@hmrc.gov.uk

Notifying as a business

The form can be submitted with an electronic signature but supplementary evidence must be supplied showing that the signature is from a person authorised to make the option on behalf of the business.

Examples of supplementary evidence include emailing the form:

- with an email from the authorised signatory to the sender within the business, giving authority to use the electronic signature;
- from the authorised signatory with their sign off in the email and the form;
- with an email chain or a scan of correspondence showing the authority given by an authorised signatory.

Notifying as an agent

A similar process applies to agents who are notifying the option to tax on behalf of their clients.

Agents must send proof that:

- the signature is from a person authorised to make the option on behalf of the business;
- authority has been granted by the business to use the electronic signature.

Examples include emailing the form with a:

- current email or email chain from an authorised signatory of your customer's business, giving you authority to use this signature and send it to us on their behalf;
- scan of correspondence showing authority is granted by an authorised signatory to use their electronic signature on the form and to also send this form to us on their behalf.

Fish and chips not declared

Summary – Under-declared business revenue and insufficient business records led to the taxpayer failing to register his business for VAT with effect from August 2010.

Since December 2009, Tahsin Dagdelen owned the Deep Sea Fish Bar, a take-away fish and chip shop. In November 2015 HMRC wrote, saying that they were unable to trace a VAT registration number for the business and that if the business was not VAT-registered, it should complete a questionnaire and provide monthly turnover figures for the period from December 2009 to November 2015.

In January 2016, having received the turnover figures, HMRC established that Tahsin Dagdelen did not use till rolls but wrote down his sales. He did not take credit cards. Ultimately, HMRC determined that he had underdeclared his trading income for several years, and that he should have been VAT registered since 2010.

Decision

The First Tier Tribunal considered that the evidence presented by both parties was rather sparse but based on the information supplied concluded that:

- this was a business which, on its own declared turnover, was operating very close to the registration threshold throughout ownership;
- the turnover declared showed a level of consistency which was not credible and that the actual turnover was higher than that declared;
- there was a high rate of non-declaring of transactions based on the agreed fact that only 9 out of 19 transactions made or overheard were recorded during self-investigation; and
- at other times Tahsin Dagdelen was responsible for writing down orders in the absence of till rolls and the Tribunal had no reason to expect that such record-keeping would be any more or less accurate than that during the period of self-investigation.

The First Tier Tribunal agreed with HMRC's conclusions and upheld the determinations, penalties and compulsory VAT registration. The Tribunal also confirmed that the discovery assessments were not stale.

Tahsin Dagdelen (T/A Deep Sea Fish Bar) v HMRC (TC07517)