

Business tax round up

(Lecture B1221 – 20.53 minutes)

STOP PRESS – CJRS extended by a month

From Thursday 5th November, England will enter a second lockdown due to run until 2 December 2020. Pubs, restaurants, gyms and non-essential shops will close, but schools, colleges and universities can stay open.

The Coronavirus Job Retention Scheme was due to close on 31 October 2020 but the Government has stated that this scheme will remain open for November:

- The flexibility of the current CJRS will be retained so that, where possible, employees will be able to continue to work;
- For hours not worked, employees will be paid at least 80% of their salary, up to £2,500 a month. Employers must cover the employer NICs and pension contributions.

To be eligible to claim for November, employees must be on an employer's PAYE payroll by 23:59 30th October 2020. In other words the employee must have been on a RTI submission notifying payment for that employee on or before 30th October 2020.

The Government has confirmed that the Job Support Scheme, that was due to start on 1 November 2020, has been delayed until the furlough scheme ends.

<https://www.gov.uk/government/news/furlough-scheme-extended-and-further-economic-support-announced>

Changes to the Winter Economy Plan

Job Support Scheme delayed

Due to the extension of the Coronavirus Job Retention Scheme (see above), the Job Support Scheme (JSS) has been postponed. The Government has confirmed that this scheme will be introduced once the CJRS eventually closes.

How the Job Support Scheme will work

Originally, the scheme was designed to help employers bring back staff to work on reduced hours rather than making them redundant but only for viable businesses, where businesses were operating but with reduced or uncertain demand.

The scheme required employers to provide at least a third of normal working hours, with the employer paying for the time. In addition, for every hour not worked by the employee, both the Government and employer will pay a third each of the employee's usual hourly wage, with the Government contribution capped at £697.92 a month. Remember, Class 1 employer NICs and pension contributions are not covered and were payable by the employer. This has become known as the Job Support Scheme Open i.e. for businesses that are open.

On 22nd October 2020, the Chancellor amended the Job Support Scheme Open as follows:

- Employees now only need to work at least 20% of their normal hours which is paid for by their employer (previously 1/3rd), so working the equivalent of just one day a week is now sufficient to be eligible for the scheme;
- Where previously employers were required to pay for 1/3rd of any hours not worked, this has now been reduced to just 5%;
- Employers will continue to receive the £1,000 Job Retention Bonus.

The Chancellor has also announced that the scheme would be expanded to support businesses across the UK required to close premises due to increased local or national restrictions, resulting in their employees not being able to work. This has become known as the Job Support Scheme Closed i.e. for businesses that are required to close.

For Tier 3 businesses required to close:

- The government will pay two thirds of employees' salaries, up to a maximum of £2,083.33 a month;
- Employers will pay the related NICs and pension contributions. The government believes that around half the employees covered by the extended scheme will not be paid enough to trigger these costs;
- Employees will effectively take a pay cut while unable to work of one third of their normal pay and will have to agree to that change in their employment contract in writing if they are not already on a zero hours contract.
- The scheme was due to run for 6 months from 1 November 2020 but, as already stated, the start date has been postponed until the CJRS ends.

Businesses in Tier 2 areas, especially in the hospitality sector, claimed they would be better off moving to Tier 3 restrictions.

Self-employed income support scheme (SEISS) extended

In September 2020, the Chancellor announced the extension of the SEISS for those continuing to actively trade but on a reduced basis. Two further grants were planned: grant 3 covering the three months to the end of January 2021 and grant 4 covering February 2021 to April 2021. These grants will be available to anyone who was previously eligible for the SEISS grant 1 and grant 2, and meets the eligibility criteria.

Grant 3 was to be calculated as 20% of average monthly profits up to a total of £1,875; capping average monthly profits at £3,125 ($£3,125 \times 20\% \times 3 \text{ months} = £1,875$). In his latest announcement, grant 3 has been increased to 40%, meaning the maximum grant will increase from £1,875 to £3,750.

As previously stated by the Chancellor, the government will review the level of the fourth grant and set this in due course.

New Business Grants

The Government had announced that increased cash grants will be available to businesses that are required to close. These grants will be linked to rateable values, with up to £3,000 per month payable every two weeks.

Properties with rateable value of:

- ≤ £15,000: grants of £667 per 2 weeks of closure (£1,334 per month);
- > £15,000 but < £51,000: grants of £1,000 per 2 weeks of closure (£2,000 per month);
- ≥ £51,000: grants of £1,500 per two weeks of closure (£3,000 per month).

The government is also extending the scheme to include businesses forced to close on a national rather than a local basis.

<https://www.gov.uk/government/news/job-support-scheme-expanded-to-firms-required-to-close-due-to-covid-restrictions>

Local Restrictions Support Grant (Tier 2)

On 22 October 2020, the Chancellor announced additional funding to allow Local Authorities to support Tier 2 businesses who are not legally required to close but which are severely impacted by the restrictions on socialising. The funding that each Local Authority will receive will be based on the number of hospitality, hotel, B&B, and leisure businesses in their area. It will be up to Local Authorities to determine which businesses are eligible for grant funding in their local areas, and what precise funding to allocate to each business.

The levels below are an approximate guide:

- £934pm for properties with a rateable value of ≤ £15,000;
- £1,400pm for properties with a rateable value between £15,000 and £51,000; and
- £2,100pm for properties with a rateable value of ≥ £51,000.

Local Authorities will also receive a 5% top up amount to these implied grant amounts to cover other businesses that might be affected by the local restrictions, but which do not neatly fit into these categories.

Businesses in Very High alert level areas will qualify for greater support whether closed (up to £3,000/month) or open. In the latter case support is being provided through business support packages provided to Local Authorities as they move into the alert level. The government is working with local leaders to ensure the Alert Level very high packages are fair and transparent.

<https://www.gov.uk/government/news/plan-for-jobs-chancellor-increases-financial-support-for-businesses-and-workers>

Airbnb working with HMRC

It has been reported by the Press that Airbnb UK have stated they will work with HMRC by sharing data on the earnings of Airbnb hosts for 2017/18 and 2018/19. Data provided by Airbnb will enable HMRC to target enquiries into individuals' tax affairs where they have not declared their rental income. HMRC has confirmed that they plan to open such enquiries during 2021/22.

Any landlords whose income has not been declared should review their accounts to make sure that their affairs are in order. It is possible that their income is covered by the £1,000 property allowance or the £7,500 annual rent-a-room limit but if not, such individuals should consider disclosing their income now, before HMRC come looking.

Let property campaign

The taxpayer's 2018/19 return can be amended until 31 January 2021 but where property income was not included in earlier years, taxpayers should consider disclosing under HMRC's let property campaign. This was last updated at the end of September 2020 and applies to landlords who owe tax through letting out residential property, in the UK or abroad. The Campaign is not available to companies or trustees.

Taxpayer's who delay in coming forward risk higher penalties if they are subject to an enquiry and have not already notified an intention to disclose.

Taxpayer's who have already filed Self Assessment returns within the appropriate time limits, but have simply made a careless mistake when declaring their income will pay penalties for a maximum of 6 years. However, by using the campaign, the penalties charged will be much lower. Where full disclosure and payment of the tax is made before HMRC identifies the issue, the penalty could be reduced to nil.

Action to take

To take part in the Let Property Campaign taxpayers should:

- notify HMRC that they want to take part in the Campaign
- disclose all income, gains, tax and duties not previously notified to HMRC;
- make a formal offer;
- pay the tax that is owed;
- help HMRC as much as possible where they ask for additional information.

Failing to disclose

Those who do not come forward, and later HMRC discovers that income or gains has been deliberately omitted, will face larger penalties. The law allows HMRC to go back up to 20 years and in serious cases HMRC may carry out a criminal investigation.

<https://www.gov.uk/government/publications/let-property-campaign-your-guide-to-making-a-disclosure/let-property-campaign-your-guide-to-making-a-disclosure>

CIS and best judgement

Summary – The amount of the income tax due under a Regulation 13 determination was reduced in part to reflect materials invoiced by an insolvent supplier.

Elmpine Developments Limited had been in the construction business since October 2013 but did not register for the Construction Industry Scheme until November 2016. In October 2017, HMRC issued a Regulation 13 determination covering this period. The company provided an invoice from AKY Contractors Limited dated 10 December 2015 for payments relating to materials and labour, arguing the sum for materials should not be included in the determination.

HMRC argued that the invoice could not be accepted as evidence because AKY Contractors Limited had entered liquidation in March 2015 and the invoice was dated December 2015. They made no comment on the reasonableness of the labour/materials split nor did they challenge the authenticity of the invoice

Elmpine Developments Limited appealed on the ground the determination had not been made to the best of HMRC's judgment (Reg 13(2)).

Decision

The First Tier Tribunal could see no reason why a company in voluntary liquidation, not an insolvent liquidation, could not issue a valid invoice as it was normal practice for liquidators to continue trading and complete existing projects. The judge stated that if the project did not come to an end until December 2015, it was totally reasonable for the liquidators to continue trading until the project was finished and then to issue a satisfactory invoice once the works were completed. The Tribunal found that HMRC's judgement was not reasonable, in that they ignored the invoice from AKY Contractors Limited, which was very relevant information.

The invoice seemed to be the best information available to support the fact that, of the total payments made to AKY Contractors Limited of just under £650,000, some £420,000 related to materials and the balance to labour. The Tribunal therefore reduced the figure for 2015/16 to exclude material costs.

The taxpayer's appeal was allowed in part.

Elmpine Developments Ltd v HMRC (TC7830)

Ice-skating - single or multiple supplies

Summary - Admission to an ice skating rink and hire of children's ice skates were separate supplies, being standard and zero rated respectively.

The Ice Rink Company Ltd and Planet Ice (Milton Keynes) Ltd ran ice rinks where customers could choose to pay for:

1. Admission to the rink only;
2. Rink admission and skate hire;
3. Skate hire only.

The companies claimed that where a customer paid for admissions to the rink as well as the hire of skates this was two separate supplies, with the admission charge being standard rated while the hire of children's skates was zero-rated. By contrast, HMRC argued there was a single supply of a skating package that was standard rated.

This case may well sound familiar as this was the second hearing by the First Tier Tribunal, the original hearing being back in 2017. The companies had been successful at the First Tier Tribunal but on appeal by HMRC, in 2019 the Upper Tribunal had concluded that the First Tier Tribunal had erred in law. The First Tier Tribunal should have considered the supplies from the perspective of customers of the skates and rink admission package (Option 2) rather than from the perspective of customers of the rinks as a whole (Options 1 to 3). The case was referred back to the First Tier Tribunal for a second hearing.

Decision

At this second hearing, the First Tier Tribunal concluded that customers were free to choose to buy skates outright, either from the rink shop or from a third party, or they could hire the skates when they paid for admission to the rink. Indeed, most customers were aware of this before they arrived at the rink. A typical customer seeking to hire skates and pay for admission would not regard the purchase as a single supply. They stated that:

"...it would by no means be artificial in this case to split the supply of the package into its two separate components. "

There were multiple supplies with the supply of children's skates being zero -rated.

The Ice Rink Company Ltd Planet Ice (Milton Keynes) Ltd v HMRC (TC7829)

Electronically Supplied Services (B2C)

The place of supply for all suppliers of B2C electronic services is where the customer belongs which means that in each EU country of download there will be an obligation to register for VAT.

Non-established traders do not enjoy the registration threshold that applies to established traders so £1 of sales in a country will require registration in that country. A business making sales in a number of EU countries is required to register in each of those countries. In order to simplify their registration obligations, businesses can choose to use the MOSS scheme. This will be the union MOSS scheme for EU suppliers and the non-union scheme for non-EU suppliers. From 1 January 2021 the UK will have to access to non-union scheme.

Example – Zoom licences

Zoom is a USA based supplier of electronic services who use the non-union MOSS scheme to deal with their EU VAT liabilities.

A UK VAT registered company buys a Zoom licence. When setting up their Zoom account, they did not enter their VAT number in the set up procedures. As far as Zoom is concerned, they are invoicing B2C and will account for UK VAT via their non-union MOSS registration. Invoices will be received by the UK company with UK VAT charged but no UK VAT number is shown on the invoice. These are not VAT invoices for recovery purposes as VAT has not been properly charged.

The UK company should provide their UK VAT number to Zoom so that the services can be correctly classified as B2B services with a mandatory reverse charge on the UK company.