SIDIKIES
Chartered Accountants

Business Focus

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Staff out of office? Rules under review

With employees increasingly able to work from almost anywhere in the world, the Office of Tax Simplification (OTS) is examining the rules around tax and social security as they apply to distance and hybrid working - within the UK and globally.

Inside this issue

DID CLAIMS COMPLY WITH THE FURLOUGH SCHEME?

1,100 HMRC staff, a set of FAQs and a negative outcome for a business at the tax tribunal. What's the common factor?

The answer is - they all demonstrate HMRC's approach to claims made under the Coronavirus Job Retention Scheme (CJRS or furlough scheme).

Risk profile

It's an approach summed up in a recent policy paper on errors and fraud in Covid support schemes generally: 'We are not writing anything off and will continue to prioritise the most serious cases of abuse. HMRC has legal powers to recover this money up to 20 years after the event.'

HMRC is heavily involved in the Taxpayer Protection Taskforce investigating this area. Although HMRC stresses that it is not actively looking for innocent errors, CJRS compliance activity is very much live and it is important for businesses to look back and check past claims and supporting calculations.

FAQs

HMRC has published FAQs showing its position with regard to common errors in furlough calculations. It focuses on instances where calculations were made using methods other than those set out in HMRC guidance, and highlights areas where an error means a claim should be corrected, and where, with certain provisos, it doesn't.

High on the 'must correct' list are errors where an employer failed to take reasonable care following HMRC guidance available at the time of the claim. On the other hand, if an employer relied on incorrect HMRC advice, in certain specific circumstances, claims may not require correction. Please contact us for further details.

Clear bright line

One of the first cases involving HMRC clawback of CJRS payments has recently come to the tax tribunal.

> It's important because even though the tribunal had every sympathy with the taxpayer business, finding it 'honest and straightforward' and noting that it had managed 'extremely competently through very difficult times', in the final analysis, none of this was enough.

The case turned on the issue of furlough payments for two members of staff who started employment just as the pandemic hit. Though they began work in February 2020, it wasn't until 25 March 2020 that they were included on an RTI return.

The problem was that to be eligible for furlough, staff not only had to be on payroll on or before 19 March 2020, they also had to be notified to HMRC on an RTI submission on or before that date. The view from HMRC's corner, therefore, was that claims for these employees were invalid and should be repaid. The view from the taxpayer's corner was that, having followed the guidance as best it could in a rapidly moving commercial and legislative environment, it had done nothing but claim in line with the 'spirit' of the scheme.

The tribunal, however, held that the rules drew 'a clear bright line to determine eligibility for the scheme' and regrettably, the taxpayer fell the wrong side of them. It's a cautionary tale – and it cost the taxpayer more than £20,000 in repayments.

Working with you

When put under scrutiny, many claims under the CJRS are turning out to contain errors – as this one did. Latest HMRC analysis in fact suggests that error was a bigger driver of problem claims than fraud. It also highlights that the greatest area of risk came from employers claiming for employees who were working.

We strongly recommend that businesses take a proactive approach, going back over claims with a view to making disclosure of any issues arising. We can help you review compliance, to help minimise potential exposure to demands for repayment or penalties.

VAT: terminating a contract early

When someone charges a customer to withdraw from an agreement to supply goods or services, the position can be complicated. What is the position as regards VAT – never a set of tax rules to take lightly? And why is it news now?

In a nutshell

Since 1 April 2022, there's been something of a U turn in HMRC policy. HMRC's interpretation had been that charges to end a contract early did not attract VAT. This was on the grounds that the charges were not generally for a supply, and so fell outside the scope of VAT. Then along came some key judgments in the Court of Justice of the European Union, with the result that HMRC policy has shifted ground.

The new position is that if there's an early termination or cancellation fee, and the goods or services supplied in the original contract were subject to VAT, then the fee to exit the contract is subject to VAT as well. HMRC guidance gives the example of the fee charged to leave a mobile phone contract or terminate a car hire contract early. In each instance, the fee will attract VAT. HMRC stresses that it's not the wording that's important, so that even where payments are described as compensation or damages, a VAT liability is likely to arise.

Essentially, the charges are treated as additional consideration for the supply of goods or services. For this to be the case, however, there must be a direct link between the customer's payment and the supply made. Where the fee charged looks 'punitive', as for example, in the case of additional fees where someone overstays at a car park, the link with the original supply may be lacking. In this scenario, the fee may fall outside the scope of VAT.

VAT: working with you

This new guidance means a significant number of payments that were previously deemed to be outside the scope of VAT may now need different treatment, and we should be pleased to give in-depth advice relevant to your business sector. If you have any queries, do please raise them with us.

Landlords

The land and property sector is one area particularly impacted by HMRC's clarification. There had been some doubt as to what stance HMRC would take on dilapidation payments to landlords – payments at the end of a lease to cover costs if property isn't handed back in the specified condition. Change to the status quo had been widely expected.

This latest guidance, however, states that dilapidation payments will still normally be outside the scope of VAT: the existing regime continues to apply. HMRC's updated VAT manual nonetheless highlights the potential for grey areas: 'We might depart from that view if in individual cases we found evidence of value shifting from rent to dilapidation payment to avoid accounting for VAT.'

BEWARE COST-OF-LIVING FINANCIAL SCAMS

As the cost-of-living crisis continues to grip the UK, experts are warning individuals to be wary of the heightened risks posed by scammers and fraudsters. Here, we consider how businesses and individuals can protect themselves against scams and fraud.

Spotting warning signs

Action Fraud, the UK's national reporting centre for fraud and cybercrime, recently warned that criminals are exploiting the UK's cost-of-living crisis to target the public with energy rebate scams. In the two weeks from 22 August to 5 September, it received 1,567 phishing emails purporting to be from energy regulator Ofgem, offering individuals energy rebates.

Action Fraud outlined a handful of steps that the public can follow in order to better protect themselves from scams. These include:

- contacting the company directly if you have doubts about an email or text message
- refraining from using contact numbers or addresses in a suspicious message - use contact details from the business's official website instead
- forwarding dubious communications to report@phishing.gov.uk.

Action Fraud also highlighted its Take Five to Stop Fraud advice, which includes taking a moment to stop and think before parting with personal information or money; challenging a suspicious request; and protecting your accounts by contacting your bank if you think you've fallen for a scam.

Keeping personal information private

Many criminals attempt to obtain individuals' personal information so that they can carry out their scams. Keeping the lid tightly sealed on all personal information is key to prevent it being stolen by fraudsters, who often use it to apply for loans or pay for goods or services.

It is vital to safeguard your sign in credentials and online banking password. Individuals may wish to make use of password managers - these can be great ways of creating strong passwords and keeping track of them. Many online services utilise two-factor authentication (2FA), which only grants the user access to an account once two or more pieces of evidence have been presented. These can be biometric, such as fingerprint and face scanning, or data-based, such as codes and passwords.

When browsing online, check to ensure websites are secure - these are ones that use https in their URL or display a small padlock symbol at the beginning of the website address.

Pension regulator's scam-fighting plan

Pension savers are also being targeted during the cost-of-living crisis leading the The Pensions Regulator (TPR) to unveil a new scam-fighting plan designed to protect savers from scams.

TPR warned that savers could be duped by offers to access their pension savings early in order to cover energy or other household bills. It stated that criminals are also peddling fake investments 'offering high returns that never materialise'.

A new scams strategy published by the Regulator sets out to make savers aware of the risks scams pose. The strategy also promises to secure the intelligence needed to pursue and punish scammers.

The TPR's three-pronged plan aims to educate industry and pension savers on the threats posed by scams; prevent practices which may harm individuals' retirement outcomes; and combat fraud by disrupting and punishing criminals.

Care should always be taken to protect your personal details and finances from criminals. Further advice can be found on the Action Fraud website.

Accessing your business tax account

Multi-factor authentication on Government Gateway accounts, including the business tax account (BTA), means getting the access code pinged to your phone.

Sometimes, however, it all hits a brick wall. What do you do if you want to change the phone number linked to your BTA? Or change how you get the code? These are very frequently asked questions.

Ironically, you need to log into your BTA to do it. But if that's not possible – in other words, if neither you, nor anyone in your business set up as an administrator, can log in, you're not stuck in an endless loop. The best port of call is HMRC's Online Services Helpdesk. The phone number is 0300 200 3600, and the line is open from 8am to 6pm Monday to Friday.

If you are able to log in, HMRC advises trying the following:

1. Select the Manage account link shown on the top menu bar.
2. Under the account details heading, select the View or change your account details link.
3. Next to the Government Gateway details heading, select the Manage your Government Gateway details link.
4. Select the How you get access codes link.
5. Changing, adding or deleting the entries on that screen as required.

If the problem is that you can't log in, but someone else in your business who is an administrator can, get them to:

1. Select the Manage account link shown on the top menu bar.
2. Select the Add or delete a team member link.
3. Select the Manage link for the required team member.
4. Select the Remove (name of user) security preferences link.

We are always happy to advise on the practical aspects of dealing with HMRC.

Bye bye GDPR?

Expect change. The General Data Protection Regulation (GDPR) is getting a post-Brexit makeover as new data protection rules are planned.

The Data Protection and Digital Information Bill is set to amend existing legislation - such as UK GDPR. The government says this will reduce the burden on businesses, replacing a 'one-size-fits-all' approach with risk-based compliance. As well as updating and simplifying the data protection framework, the aim is to give the flexibility to drive greater innovation. Headline issues include:

- replacement of the requirement to appoint a Data Protection Officer, with a new requirement to appoint a senior responsible individual. Organisations carrying out 'low risk' processing activities will not need to make this appointment
- new requirements on record keeping, with controllers or processors employing fewer than 250 people exempt from the duty to keep records unless carrying out high risk processing
- changed procedures around data subject access requests, giving more grounds for a business to refuse or charge for these
- data protection impact assessments to be replaced by an assessment of high risk processing.

A change to the regulatory body, the Information Commissioner's Office, is planned, with its powers transferred to a new body, the Information Commission.

Whilst a broad outline of proposals is starting to emerge, at this stage, there are two things to bear in mind. The first is that details may yet change before the Bill becomes law. The second is the European dimension. UK businesses operating in both the EEA and the UK will need to make sure they are compliant in each. Further, the free flow of personal data from Europe is currently guaranteed by the EU's 'Adequacy' decision, but the government acknowledges that 'As the UK diverges from EU GDPR, the risk that the EU revokes its Adequacy decision increases.' This is a point businesses engaging with the EU will want to keep under review.

Easing into new rules is always a concern and we are on hand to assist. Please don't hesitate to get in touch.

Reminders for your diary

November 2022

2 Deadline for submitting P46(Car) for employees whose car/fuel benefits changed during the quarter to 5 October 2022.

19 PAYE, Student loan and CIS deductions are due for the month to 5 November 2022.

December 2022

1 New Advisory Fuel Rates (AFR) for company car users apply from today.

19 PAYE, Student loan and CIS deductions are due for the month to 5 December 2022.

30 Online filing deadline for submitting 2021/22 self assessment return if you require HMRC to collect any underpaid tax by making an adjustment to your 2023/24 tax code.

31 End of CT61 quarterly period.

Filing date for Company Tax Return Form CT600 for period ended 31 December 2021.

January 2023

1 Due date for payment of corporation tax for period ended 31 March 2022.

14 Due date for income tax for the CT61 quarter to 31 December 2022.

19 PAYE, Student loan and CIS deductions are due for the month to 5 January 2023.

PAYE quarterly payments are due for small employers for the pay periods 6 October 2022 to 5 January 2023.

31 Deadline for submitting your 2021/22 self assessment return (£100 automatic penalty if your return is late) and the balance of your 2021/22 liability together with the first payment on account for 2022/23 are also due.

Capital gains tax payment for 2021/22.

Balancing payment – 2021/22 income tax and Class 4 NICs. Class 2 NICs also due.

TAX TIP

Review your business structure

You may be able to reduce your annual tax bill by reviewing your business's structure, as there are often significant tax savings to be made. During the early years of a business, it may be preferable to operate as a sole trader or in a partnership. However, as your profits increase, you may find it more beneficial to form a limited company.

Incorporating your business also has many non-tax advantages. Incorporated companies enjoy legal continuity, as they are legal entities in their own right. In addition, if a business owner ever wished to transfer ownership, as an incorporated company this can be achieved with greater ease than if trading as a sole trader or in a partnership.

Please contact us for more information.

Business Round-up

Chancellor uses Mini Budget to outline measures to boost economic growth

Chancellor Kwasi Kwarteng used the 2022 Mini Budget to announce measures to help boost UK economic growth.

Mr Kwarteng announced a series of tax cuts for businesses and individuals adding up to £45 billion. The basic rate of income tax will be cut to 19p in April 2023, a year ahead of schedule.

The Chancellor also confirmed that the 1.25% rise in national insurance contributions (NICs) that came in this year will be reversed from 6 November, while the Health and Social Care Levy has been cancelled. The planned rise in corporation tax to 25% will be scrapped and the rate maintained at the current 19%.

Additionally, the level at which homebuyers will start to pay Stamp Duty Land Tax (SDLT) in England and Northern Ireland has been doubled from £125,000 to £250,000. First-time homebuyers will pay no SDLT on homes worth £450,000, up from the previous price of £300,000.

For businesses, Investment Zones will be established across the UK that benefit from lower taxes and liberalised planning frameworks to encourage business investment. The government is already in discussions with 38 local authorities to establish Investment Zones in England. In addition, it says it will work closely with the devolved administrations to offer the same opportunities in Scotland, Wales and Northern Ireland.

The Chancellor also committed to repealing the off-payroll legislation. The IR35 reforms, which rolled into the public and private sectors in 2017 and 2021 respectively, will no longer apply from April 2023.

HMRC releases more details on MTD for Income Tax

HMRC has published more details on how Making Tax Digital for Income Tax (MTD for IT) will work for buy-to-let landlords and sole traders with qualifying income over £10,000.

The new income tax framework for MTD for IT will be mandatory from 6 April 2024. HMRC is now asking for users to sign up for the test phase.

The new system will replace self assessment tax returns for anyone who qualifies for MTD for IT as they will have to submit all non-qualifying income through the Personal Tax Account (PTA) system instead. The new deadline for end of year statements will be 31 January after the end of each tax year.

HMRC will use data from self assessment tax returns to calculate qualifying income in the first instance and will contact all affected taxpayers directly to inform them that they fall under the mandatory MTD for IT rules.

HMRC states: 'Your qualifying income is the combined income that you get in a tax year from self-employment and property income sources. We assess this before you deduct expenses (that is, your gross income or turnover). All of your qualifying income must be reported through MTD compatible software.

'All other sources of income reported through self assessment, such as income from employment, dividends or savings, do not count towards your qualifying income. You will need to report income from these sources using either your MTD compatible software (if it has the functionality) or HMRC's online services account.'

SIDIKIES

Chartered Accountants

1 Sun Street, Finsbury Square,
London EC2A 2EP

Telephone: +44 (0)20 7256 7563
E-mail: info@sidikies.com

www.sidikies.com

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