



HM Treasury

From: Name Redacted
Team: PTWP
Ext: Irrelevant & Sensitive
Date: 3 April 2020

Submission: Further legislation on the Coronavirus Job Retention Scheme and the Self Employed Income Support Scheme

To: CX (cc FST)

Recommendation: That you agree that we should pursue further primary legislation to confirm that grants made under both Schemes are taxable and to ensure that HMRC have sufficient compliance and enforcement powers in relation to the schemes.

Timing: Urgent- we would welcome your steer as soon as possible as we will need to instruct Parliamentary Counsel if tabling amendments to the Finance Bill. Given the uncertainty over the timetable, OPC would like all Government amendments ready to table on 21 April, which would already be very tight.

Summary

The Coronavirus Act 2020 gives HM Treasury powers to direct HMRC to exercise new functions to respond to the Coronavirus. This is so they can pay grants to deliver the Coronavirus Job Retention Scheme (CJRS) and the Self-Employed Income Support Scheme (SEISS). Although the legal basis for the Schemes is clear, LPP

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LPP. You have also agreed that the grants under both Schemes should be taxable, however it is not clear they are taxable under the law as it stands. This advice sets out the case for further primary legislation to address both these issues. **We recommend you agree that we should pursue further primary legislation both to give HMRC further compliance powers and to put beyond doubt that the grants are taxable.**

Detail

1. To deliver both the CJRS and SEISS, we took primary powers under the Coronavirus Act 2020. This means that HMT can direct HMRC to exercise new functions (e.g. pay grants in new schemes), as well as ensuring that the Government has the necessary spending powers. These powers, plus the Directions, which set out the eligibility criteria and payment processes, plus HMRC’s existing powers, provide the legal basis for both Schemes. You will receive advice on the directions for CJRS next week, and SEISS the week after that.

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Taxability of the Grants

3. You have agreed that SEISS and CJRS grants should be taxable. For SEISS it is not clear that the payments would be taxable under current law in all circumstances. The grant would be taxable if it is either trading income or partnership income. Arguments can be made that the grant is in fact a payment to relieve personal hardship, not trading income, as there is no condition to use the grant for business purposes. Additionally, as grants will be paid directly to individual partners rather than through their partnerships, they may not be taxable as partnership income. **LPP**

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We recommend that you legislate to ensure SEISS grants are taxable.

4. For CJRS, there may be stronger arguments that the grants should be taxable income. However, **LPP**

LPP Given the very substantial amounts of tax at risk under the CJRS (given the monthly cost of the scheme is around £8.3 billion, the amount lost if this was not taxable would be significant), we think it would be prudent to put the matter beyond doubt. ***We recommend that you legislate to clarify the tax treatment of CJRS grants.***

5. You will also receive advice on the Small Business Grants Scheme and the Retail, Hospitality and Leisure Grants scheme. **LPP**

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HMRC Compliance Powers

6. As outlined above, **LPP**

LPP As you are aware, HMRC are working to mitigate abuse of the schemes up front. However, the directions currently do not give them compliance powers to recover overpayments and request information to check eligibility, where HMRC does not already hold the necessary information. This is particularly relevant as HMRC will have limited time to risk-assess applications before awarding the grant, and so will have to do the bulk of their compliance checks after the grant has been awarded. The powers set out below would reduce the risk of fraud somewhat, but as we have previously advised you, the scheme remains substantially more open to fraud than would ordinarily be the case.

Recovering Grants Incorrectly Paid

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Requiring information or evidence from applicants

10. The eligibility conditions for both the grants will be set out in the Directions. HMRC will be able to check whether applicants meet the eligibility conditions based on information they provide or information they already hold and will be requesting some information through the application processes. However, HMRC do not have the powers to require additional information or evidence as part of their investigations where they suspect non-compliance.
11. **CJRS:** Whilst the scheme has been designed to mitigate abuse where possible, employers are self-assessing the amount of grant they are entitled to under the scheme and the claims will only be subject to anti-fraud checks and some basic credibility checks. Given the substantial sums being paid under the scheme, LPP

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12. **SEISS:** We will be allowing individuals who missed the self-assessment deadline until 23 April to file their returns, to allow those who were self-employed in 2018-19 but have not yet filed a return to benefit from SEISS grants. HMRC have received almost 51,000 late returns in the last week, which is an 150% increase on the same period last year. There is a high risk that individuals may have inflated their income on these returns to try and maximise their grant payments. However, HMRC are not able to make any information requests to verify these returns without opening a full enquiry, which would be resource intensive and not proportionate.
13. Information and enquiry powers would also help HMRC to check eligibility conditions where they don't hold the information required, such as that your income must have fallen due to coronavirus and that you must intend to continue trading. In practice (and in line with previous advice to you), HMRC would only take action in the most serious and fraudulent cases and would not be routinely opening enquiries to determine whether an individual's income has fallen. This is because except in the most obviously fraudulent cases (such as someone who stopped trading 6 months ago claiming the grant), it is very difficult to verify that somebody's income has not fallen due to coronavirus, due to natural variations in profits between months and years. However, LPP

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We recommend legislating to give HMRC powers to require information from SEISS applicants.

Powers to apply penalties

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Appeals and Disputes

15. If grants can be recovered and penalties applied, we will want to ensure HMRC customers have the right to recourse if they feel these are unjustified. However, we will need to design the appeals or disputes process so that it is not open to unmeritorious claims from individuals or businesses who are unhappy that they are not eligible for the schemes. ***We recommend legislating to provide an appropriate appeals or disputes mechanism. You will receive further advice on this point.***

Legislative Vehicle and Handling

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21. ***We therefore recommend that we urgently explore the possibility of legislating in the Spring Finance Bill.*** If you agree with the overall approach set out in this submission, we will revert with full advice on the powers that would be included in the legislation and a Parliamentary handling plan.

Summary of Recommendations

Do you agree that further primary legislation is required?

Do you agree to legislate to ensure SEISS and CJRS grants are taxable?

Do you agree to legislate to give HMRC powers to recover SEISS and CJRS grants where they are incorrectly paid?

Do you agree to legislate to give HMRC powers to require information from CJRS applicants?

Do you want to legislate to give HMRC powers to require information from SEISS applicants?

Do you agree to legislate to give HMRC powers to apply penalties in certain cases?

Do you agree to legislate for an appeals or disputes process?

Do you agree that we should urgently explore the possibility of legislating in the Spring Finance Bill?