Tax and COVID-19: the wider picture

General Features



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Key Points

What is the issue?

For advisers, one of the most difficult things to deal with has been that information on the various COVID-19 arrangements has inevitably emerged in a piecemeal fashion.

What does it mean to me?

We have to do the best we can for our clients to help them receive the government support available, but we should resist calls to engineer artificially high levels of grant/subsidy.

What can I take away?

Once things get back to normal, there will be huge amount of work for agents to do in getting their clients' affairs up to date.

It seems only a few days ago that the words furlough and COVID were known only to scrabble enthusiasts or cruciverbalists. Now they are among the most common search terms on the internet. Tax advisers are among those having to get to grips not only with new terminology but with what amounts to a wholly new regime.
My purpose in this article is not to give a complete account of all the tax changes – there are many places to find that including the CIOT's dedicated pages or the Tolley microsite (covid19. tolley.co.uk). Rather, I want to draw out some broader themes and reflect on what lessons can be learned for the future.

What is fair?

In designing any new tax initiative one of the key questions is how fair it will be. If you ask the man or woman in the street (assuming that you can still find one…) whether a system should be fair they will say 'of course it should'. But fairness comes at a cost – complexity. We all, myself included, press governments to implement policies which are fair and simple, as if the two go hand in hand rather than, as often the case, represent polar opposites. So, where do the COVID measures sit on this spectrum?

If we look at the broader framework first, you could reasonably conclude that simplicity has been a higher priority than fairness. There is sometimes a fairly loose correlation in these new measures between actual need and the support given. Mainly we have an objective set of rules which apply across the board. This can lead to resentment. You only have to read the headlines to see complaints that supermarket X, airline Y or fashion designer Z are getting support when they are rich enough to survive without it. Whether these views are right is a matter of opinion, but such outcomes are the inevitable consequence of policy decisions to keep eligibility criteria as simple as possible.

When we drill down into the detail the picture is more nuanced. Let's look at the two main schemes – the job retention scheme (JRS) and the self-employed support scheme (SES). The latter is a fairly blunt instrument. There is an upper limit on profits of £50,000 (which can be one year's or an average of three years): if you are within in you get support equal to 80% of profits up to a cap: if you are above it you get nothing. This makes things pretty simple but falling the wrong side of the line has severe consequences. On one online forum I saw an accountant had worked out that his client exceeded the cap by £27.50 and so would get nothing from the SES. He must have to have had a very difficult conversation with his client. Of course the SES could have been designed with a tapered withdrawal of benefit but that would have made it much more complex.

By contrast, the JRS does attempt a greater degree of precision. It attempts a precise match between the grant and 80% of salary (up to a cap) and consequently includes a set of highly complex rules to determine which elements of salary are taken into account. This does more closely meet the test of fairness but comes with a significant complexity cost: my heart sank when I saw HMRC's examples of how to do the calculations, with everything pro-rated down to a daily basis, although HMRC's online calculator does do much of the heavy lifting.

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This is not, of course, a case of one approach being right and the other being wrong – different decisions have been taken on where the balance lies. This is undoubtedly related to the fact that the JRS depends on the employer making the calculation to support the claim whereas it will be HMRC which calculates the amount of the SES. It would presumably have been too burdensome for HMRC to have had to undertake anything more than broad brush calculations, whereas an employer might reasonably be expected to have access to more detailed information to enable a precise claim for JRS to be made.

Hard cases make bad law?

There is a related issue here: how far it is reasonable to go to design a system which will support absolutely everybody it ought to? So, the SES scheme doesn't give any support to individuals who commenced trade on or after 6 April 2019; the JRS doesn't give employers support for individuals who commenced employment after

19 March 2020; owners of PSCs who rewarded themselves mainly through dividends largely fall into a gap between the two schemes.

Is this right? Those who are affected would certainly say that it is isn't and there is still lobbying going on to try to get changes. But the inevitable truth is that devising a scheme which would have accommodated all of these sorts of situations would have made them much more difficult to administer and, as I discuss below, open to manipulation and fraud. The imperative was for the government to get something up and running as soon as possible. I mean no disrespect to those caught in some of these traps, for whom I have every sympathy, but it is inevitable that any scheme introduced in these extraordinary circumstances is bound to have rough edges. The Chancellor has been commendably honest about this. On 24 March he told Parliament: 'despite the significant economic interventions we have put in place, we will not be able to protect every single job or save every single business.'

Acting without an act

For advisers, one of the most difficult things to deal with has been that information on the various arrangements has emerged piecemeal in guidance and that legislative backing of any sort has followed later or, in some case, not at all. This is not a criticism of the approach which HMRC has taken. The pressure to get some information out must have been overwhelming and it clearly would have been wrong to publish reams and reams of what would for most people have been impenetrable legislation at the outset.

So the pattern has been to make broad announcements and gradually fill in the detail over the following days and weeks.

The problem for advisers in all of this is of course that guidance does not have the precision of language we are used to in legislation and so often creates more issues than it solves. Take as a simple example the postponement of the second payment of account. This was announced as part of a package of measures for the self-employed and there was some confusion about whether it applied just to self-employed income or to all income within self-assessment. Within our team we had a number of discussions about whether it would even be possible to calculate payments on accounts when excluding only self-employed income. Eventually HMRC confirmed that no payment on account was due in respect of any SA income. That then led to a further question about the status of trusts/trustees. Again, this

prompted much discussion on how SA actually works for trusts/trustees. Finally, confirmation was given that trusts/trustees would not be required to make the second payment on account. I make these points not in criticism but to show just how different everything is at the moment where we are not working with legislation from the outset. There are many similar examples and we will no doubt be discovering fresh points as we delve deeper into the detail. Who would have thought, for example, that, as discussed in Bill Dodwell's article (at page 10), guidance on company residence would need to be revised as a result of the pandemic? Truly there is not a single aspect of our tax system which in some way has been unaffected by this emergency.

We do now have the Treasury Direction on the JRS which has helped to fill in many of the gaps. Constitutional scholars will derive great pleasure in debating the precise legal status of a direction of this nature: the rest of us can leave them to it and be thankful that at last we have something which at least looks and feels like legislation.

We are all in this together – really?

A national crisis brings out the best in people – you only have to look what Captain Tom Moore has achieved: but it also brings out the worst. Our view of the blitz spirit which got us through the war ignores the fact that crime went up significantly during the war and many people used the cover of the conflict for nefarious activities – from minor fiddling of petrol coupons through to murder dressed up to look like the aftermath of a bombing raid.

Unfortunately some of those same behaviours (OK not murder as far as I know) have emerged in relation to the COVID-19 crisis. HMRC has already published a warning about scam emails (see bit.ly/2Ktjuuo) and there are known to be concerns that concerted attacks on HMRC systems could be attempted. One of the reasons that the SES is not open to people who commenced self-employment on or after 6 April 2019 is that such people won't yet be known to HMRC and thus fraudsters could have created fictitious identities of purported new self-employed people to cream money off the system.

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On a less serious, but still concerning, note are various suggestions as to how to get round some of the rules in order to create higher levels of grant/subsidy. I've seen some pretty outrageous ideas out there, such as retrospectively making a spouse an employee, adjusting the pay records, and then putting him/her on furlough in order to obtain government support. Many of those ideas don't work anyhow, but personally I think that it is dangerous for people even to be thinking about them. These are not ordinary times and our profession risks a big backlash if we were being seen to use, shall I call them, creative techniques to give our clients a greater benefit than they would otherwise be entitled to. The CIOT and other professional bodies have already warned members about this and in my view they are right to do so. We have to do the best we can for our clients but not at any cost.

It works!

Before I look to the future it is right that HMRC should be congratulated for what they have achieved in a very short period of time. To have devised two major schemes covering literally millions of people and to have got the first of them up and running within the timeframe which they announced is a hugely impressive achievement. There was much speculation in parts of the online community that the JRS website would crash as soon as it was launched but this was unfounded and over 140,000 employers used the site on the first day. It shows what can be done when backs are against the wall and bodes well for future HMRC IT developments, though I trust that they will never have to take place against the same background. Of course I could be forced to eat my own words if the site collapses five minutes before this article is published but I am pretty confident now that things are up and running smoothly for the foreseeable future.

Where does that leave us?

So, what does that future look like? In the short term, everything I see tells me that the profession has responded magnificently to the crisis. Taxpayers needed support from their advisers in extraordinary circumstances and they have received it. Agents have been working tirelessly, often with no certainty that they will get paid, because that client service ethic is deeply embedded in what we all do. Some clients will go to the wall, which will be a tragedy for them, but those who are able to keep going will look back with huge appreciation for the support that their advisers gave them.

What is becoming clear to me, however, is that once things do start to get back to normal there will be a huge amount of work for agents to do in getting their clients' affairs up to date. Even more than usual, clients will not have been able to keep proper records of everything that they have done; what records there are likely to be fragmented because finance teams have been working at home and clients will want to concentrate on rebuilding their businesses rather than tidying up the past. So there will be real problems ahead for us and that is something we need to prepare for. Just take one example – the deferment of a quarter's VAT payment to the end of March 2021. What are the chances that money will actually be available to make that payment? Businesses will not have put the VAT payment safely in a bank account ready to be drawn on in March: they will almost certainly have used the money to keep afloat. Once they start to trade again they will be able to fund current VAT from current profits, but where is the money coming from to pay the deferred amount? It could take years for everything to catch up. Will clients want to pay advisers for doing that, and the many other tasks that will need to be done to get things up to date?

I didn't really want to end on a negative note, but there has to be sense of realism to all of this. Times are going to be tough for us all for a long time to come. There is an old saying 'after the Lord Mayor's show comes….' Look it up if you don't know how it ends: the editor of this magazine is far too polite to allow me to publish the full quote!