COVID-19: Update on the Self-Employment Income Support Scheme and Coronavirus Job Retention Scheme

Employment Tax **Management of taxes**

28 August 2020

HMRC have issued guidance on how taxpayers should notify and repay Self-Employment Income Support Scheme and Coronavirus Job Retention Scheme grants which they overclaimed or were not entitled to received, and the possible penalty consequences if overpayments are not notified to HMRC.

The legislation giving HMRC the powers to recover payments that recipients were not entitled to receive, and to charge a penalty in cases of deliberate non-compliance in respect of both the Self-Employment Income Support Scheme (SEISS) and Coronavirus Job Retention Scheme (CJRS) (and other government support schemes), is in FA 2020 Sch 16, which received Royal Assent on 22 July 2020. The legislation refers to these collectively as Coronavirus Support Payments (CSPs).

The legislation introduces an income tax charge on a person who was not entitled to a CSP at the time the payment was received – equal to 100% of the amount overclaimed – unless it has already been repaid to HMRC. It also gives HMRC the power to raise assessments to collect overpayments. There is an obligation on recipients to notify overpayments of CSPs within a prescribed period. These are set out below.

For the SEISS, the notification period ends on the later of:

- 20 October 2020, for grants received before Royal Assent (22 July); or
- 90 days after the date the grant was received, in all For the CJRS, the notification period ends on the latest of:

- 90 days after the date the grant was received; or
- 90 days after the day circumstances changed so that you were no longer entitled to keep the grant; or
- 20 October 2020.

A deliberate and concealed failure to notify penalty will apply where the person knew that they were not entitled to receive the payment at the time they received it. This means a penalty of up to 100% of the overpaid amount, and that the person will not be entitled to rely on the defence of reasonable excuse. HMRC also have the power to charge penalties for non-compliance with the SEISS and CJRS rules under the existing failure to notify rules in FA 2008 Sch 41, meaning that penalties may be chargeable even where there has not been any deliberate behaviour.

A non-deliberate failure to notify penalty will not be charged if the overclaimed CSP has been repaid by 31 January 2022. There is also the likelihood that error penalties under FA 2007 Sch 24 could apply in cases where CSPs are not reported correctly on tax returns.

Consequently, it will be important that taxpayers and their advisers are aware of the requirement to notify overclaims and overpayments within the times specified, even where these are a result of inadvertent errors, perhaps caused by not understanding the rules of the schemes correctly, rather than due to a deliberate intention to abuse the schemes. It may therefore be advisable to check claims already made to ensure that any errors can be identified and notified to HMRC accordingly.

HMRC have recently published factsheets which explain what to do and what will happen if you have been paid an SEISS grant (https://tinyurl.com/y46cqz95) or CJRS grant (https://tinyurl.com/y5jf5dup) which you were not entitled to and have not repaid it, and the possible penalty consequences.

The factsheets themselves do not specify how overpayments should be notified to HMRC. However, HMRC have provided an online form for notifying overpayments of SEISS grants which is available on GOV.UK (https://tinyurl.com/y2ttckh3). In the main, SEISS overpayments will be those claimed in error where a person was not eligible for the grant, for example because they had ceased trading as a self-employed person during 2019/20, or because their business was not in fact ‘adversely affected’ by coronavirus when they made their claim.

The online form can also be used to make a voluntary repayment of all or part of the grant. HMRC will provide bank details to enable the grant to be repaid once the online form has been completed. A telephone option is available but only for those people who cannot use the online form.

If an error has been made in a CJRS claim which means too much has been claimed, the overpayment should be included on the next online claim, thereby reducing the new claim. If a business is not planning to submit any further claims, it should contact HMRC to pay the money back. More guidance on how to report a CJRS error is available on GOV.UK (see https://tinyurl.com/y67skpqw).

Where a person or business cannot afford to repay a CSP they claimed but were not entitled to, they should contact HMRC to discuss their options, which might include agreeing a time to pay arrangement. It is not clear at this stage when HMRC will issue assessments either to collect overpayments that have been notified to them but not repaid, or to collect overpayments they identify through their compliance activity. Where an assessment is issued, payment will be due within 30 days, and interest will be charged on late payments. Late payment penalties may also be chargeable if the amount remains unpaid 31 days after the due date.

The guidance also explains when overclaimed CSPs will need to be reported on tax returns, and when they will not need to be reported. For individuals, this will be the 2020/21 self-assessment tax return and for companies the appropriate corporation tax return. Further guidance will be provided in the tax return guidance notes and help sheets.

Both HMRC factsheets (see above) explain that HMRC’s priority is to support their customers whilst addressing serious fraud and criminal attacks; and that they will use their powers to assess overpayments and issue penalties which support these priorities. They say they will not actively be seeking out innocent errors and small mistakes in their compliance approach. However, they also say that they will be commencing compliance action to identify and address incorrect claims, meaning that as soon as taxpayers become aware that they have been overpaid under either scheme they should notify HMRC, preferably within the timescales outlined above, and repay the overpaid amount.

Ongoing work

The CIOT and ATT are continuing to work with both members and HMRC to address queries on the schemes and provide support.
All the latest information can be found on the ATT and CIOT websites. The CIOT pages covering the SEISS (www.tax.org.uk/COVID19SEISS) and the CJRS (www.tax.org.uk/COVID19JRS) are frequently updated as we receive more information, as are the ATT detailed guidance notes on the SEISS (www.att.org.uk/COVID19SEISS) and accompanying FAQs (www.att.org.uk/COVID19SEISSFAQ) and the guidance notes on the CJRS (for employers, see www.att.org.uk/COVID19JRSemployers; and for employees, see www.att.org.uk/COVID19JRSemployees).

The ATT and CIOT also held a second webinar on the SEISS on 7 July 2020. A recording of this webinar and the slides used can be found on the ATT (www.att.org.uk/COVID19SEISSJUL) and CIOT (www.tax.org.uk/COVID19SEISSJUL) websites. We are planning to hold a third webinar on the SEISS at the beginning of October. Please look out for announcements shortly.

Please continue to send your queries and feedback on the schemes to either technical@ciot.org.uk or atttechncial@att.org.uk, and do keep an eye on our websites for all the latest information.