



Chartered Accountants

Covid-19, HMRC Amnesty October 2020



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Beware the 90 Day time Limit

HMRC has brought into law significant tax and penalty charges for Incorrect claims relating to Coronavirus Job Retention Scheme (CJRS), Self-employment Income Support Scheme (SEISS), Coronavirus Statutory Sick Pay Rebate Scheme and coronavirus business support grants.

HMRC believes that up approximately 3.5 billion has been overclaimed on the CJRS scheme alone. They have received over 8,000 calls to their fraud hotline and already are said to be looking into 27,000 cases. It can be expected that HMRC will ramp up investigations particularly into both CJRS and Income Support schemes.

Deadline

To avoid penalties in respect of these claims we would urge you to check your entitlement to these claims **before 20th October 2020 and make any necessary notification to HMRC or deal with the overclaims made.**

Finance Act 2020 has now received Royal Assent, It provides HMRC with powers to recover grant payments to which the recipient is not entitled, as well as to charge penalties.

The Legal Position

The law is clear that the onus is on the taxpayer to notify HMRC if they have overclaimed a CJRS or SEISS grant and this must be done by 20th October 2020, or 90 days of receipt of the grant, whichever is the later. For payments made under CJRS, where the recipient ceases to be entitled to retain the payment then the notification deadline is the later of 90 days after ceasing to be entitled to the monies or the two dates mentioned above.

Penalties

The penalty regime is based on the usual failure-to-notify penalties with an additional provision which means that if the taxpayer knew that they were not entitled to the grant at the time when they received it (or ceased to be able to retain it), the overpayment must be notified or repayment made in full by the end of the notification period. **Any failure arising from this additional provision will be treated as deliberate and concealed. Failure to notify penalties could be as much as 100% of the entire amount overclaimed.**

HMRC may issue assessments to recover overclaimed grants. If that does not occur and monies were not otherwise repaid previously, then the overclaimed amount must be reported on the taxpayer's income tax or corporation tax return and tax paid on time. Overclaimed grants may include not using the funds received for the purposes within a timely period for example not paying over PAYE in a timely manner. If you have not paid over PAYE, we would recommend that you ensure that you have a HMRC time to pay arrangement in place before the 20 October 2020

Error penalties may apply if a taxpayer makes a mistake when putting the grant figures on their tax return, as they would for any other error on a return. HMRC have made the following comment “we are not going to set out to try to find employers who have made legitimate mistakes in compiling their claims, because this is obviously something new that everybody had to get to grips with in a very difficult time” However whilst HMRC have made this comment it is to be seen whether they will resort to the wording of the legislation in due course when they are trying to collect tax.

We recommend that clients who have claimed grants now check that they were entitled to the amount they received.

The Risk Factors

For **SEISS grants** the key risks affecting entitlement are:

- the trade was not adversely affected by coronavirus; (it was a requirement to evidence that the business was adversely affected at the date of each claim)
- the trade did not continue in the tax year 2019/20 (e.g., because the business was incorporated); or
- there was no intention to continue to trade in the tax year 2020/21.

The key risks affecting entitlement to **CJRS grants** are below

- grants not used for the purposes for which they are intended.
- Correct paperwork not retained regarding furlough notices to staff
- Directors not complying with the requirement for furlough to be approved by the board
- Fully furloughed and Flexible furloughed employees were not furloughed for at least 3 weeks prior to 30th June
- calculation errors
- employees working during periods that they are on furlough or who were not employed by you
- Employees not on an RTI before 19 March 2020

How to disclose:

HMRC have set up dedicated web pages to deal with each of the schemes covered, simply click on the links below for more information:

[Dealing with CJRS overpayments](#)

[Dealing with SEISS overpayments](#)

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