Representation from the Chartered Institute of Taxation
for Finance Bill 2021 Committee Stage

Self-Employment Income Support Scheme
Clause 32

Executive Summary

Clause 32 makes three amendments to the existing legislation relating to the tax treatment of Self-Employment Income Support Scheme (SEISS) payments:

1. **Extends the Treasury's regulation making powers in relation to the taxation of SEISS payments – on which we have no comments.**
2. **Clarifies that the SEISS grant payments are taxed in the tax year of receipt – which whilst simple, could give rise to unfair outcomes for those who do not prepare their accounts in line with the tax year. The government should consider how these could be addressed.**
3. **Provides a mechanism which will apply a tax charge if a person ceases to be entitled to a SEISS payment received on or after 6 April 2021 – which concerns us because it will apply to all taxpayers (not just fraudulent claims), can only reduce or eliminate a SEISS claim (not increase or create eligibility for one), and will be difficult for taxpayers to understand and comply with.**

More generally, we are disappointed that the government has not gone further to fill some of the gaps between the SEISS scheme and the Coronavirus Job Retention Scheme, which will leave some without support for nearly eighteen months.

1 Overview

1.1 Clause 32 makes three amendments to the existing legislation relating to the tax treatment of Self-Employment Income Support Scheme (SEISS) payments:

a) Extends the Treasury's regulation making powers in relation to the taxation of SEISS payments [we have no comments on this aspect].
b) Clarifies that the SEISS grant payments are taxed in the tax year of receipt.
c) Provides a mechanism which will apply a tax charge if a person ceases to be entitled to a SEISS payment received on or after 6 April 2021.

2 Taxation of grant payments in the tax year of receipt

2.1 Paragraph 3(3) of Schedule 16 to the Finance Act 2020 specified that SEISS grants should be treated as income of a revenue nature in the tax year 2020-21 (irrespective of its treatment for accounting purposes).

2.2 The SEISS scheme has been extended to include a fourth and fifth grant, both of which will be payable in the 2021-22 tax year. This amendment provided for by clause 32 ensures that the grants fall to be taxed in the tax year in which they are received, rather than entirely in 2020-21.

2.3 Whilst taxing the grants in the tax year of receipt is perhaps the simplest option, there will be some businesses – particularly those who do not prepare their accounts in line with the tax year – who could be worse off as a result. An illustrative example is included in the appendix.

2.4 We recognise that it has been necessary to extend the SEISS further than originally intended, and with the benefit of hindsight a different approach to the taxation of these grants might have been adopted. Whilst we recognise the additional complexity this might cause, we would encourage the government to consider how these unfair outcomes might be addressed. This might entail, for example, the ability to make an election to treat the grants as taxable on an accounting period, rather than tax year, basis.

3 New tax charge if a person ceases to be entitled to a SEISS payment

3.1 We support the government in its attempts to minimise the risk of fraudulent claims within all the COVID schemes, and to seek their recovery.

3.2 Eligibility for the first three SEISS grants was determined at the point of making the claim (albeit based on some historical data). There was no requirement to consider subsequent events or actions.

3.3 This measure ensures that subsequent events – namely the amendment to a person's tax return – will have a direct impact on the eligibility for, and amount of, SEISS grants payable on or after 6 April 2021.

3.4 It is effected by paragraph 10 of the Treasury Direction for the fourth grant payment (SEISS 4), published on 9 April 2021.[1] This states:

10.1 Subject to paragraph 10.2, where an amendment made on or after 3 March 2021 to a person's tax return would change the amount of trading profits or relevant income taken into account for the purposes of SEISS 4, if on the basis of those amounts-

(a) the person would not meet the profits condition, the person ceases to be entitled to retain any SEISS 4 payment received and it must be returned to HMRC immediately, or

(b) the amount of the SEISS 4 payment would be lower, the person ceases to be entitled to retain the excess amount of SEISS 4 payment received and it must be returned to HMRC immediately.

10.2 Paragraph 10.1 does not apply if-

[1] See https://www.gov.uk/government/publications/treasury-direction-made-by-the-chancellor-under-sections-71-and-76-of-the-coronavirus-act-2020?utm_source=40e61b90-3990-4bfb-bc04-5e6e39c928f6&utm_medium=email&utm_campaign=govuk-notifications&utm_content=immediate

(a) the amount of the SEISS 4 payment received was £100 or less, or

(b) the amount of the excess to which the person ceases to be entitled is £100 or less.

3.5 We expect that a similar provision will be included in the Treasury Direction for the fifth SEISS grant.

3.6 We are pleased that this measure is prospective, and will only apply to the fourth and fifth SEISS grants (as the measure applies to grants received on or after 6 April 2021).

3.7 However, we are concerned that:

- The measure appears to affect ALL amendments and ALL SEISS claims, and is not limited to fraudulent or abusive claims. So, if a compliant taxpayer submits their Self-Assessment return based on accurate figures (or valid estimates), but their return is subsequently amended, some or all of their SEISS grant could fall to be repaid.
- The measure is a 'one way street' – it only claws back overclaimed grants, and will not top up grant claims if the amendment would have resulted in a higher grant being payable, or the individual becoming eligible for the grant in the first place. We can understand why the government would adopt this approach (to prevent dishonest amendments to tax returns, purely to increase the amount of grant payable), but it then seems inequitable to reduce grants irrespective of the reason for the amendment; rather than only in cases of fraud or abuse.
- Taxpayers simply won't be aware that amending their return could jeopardise their SEISS grant (the repayment of which would be due immediately), or that there could be significant penalties for failing to notify HMRC within the prescribed period (90 days).

3.8 HMRC will need to ensure that there is adequate guidance for claimants in relation to this, both in the SEISS grant claim process, and the Self-Assessment return amendment process.

4 The Chartered Institute of Taxation

4.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

4.2 The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT's comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

4.3 The CIOT's 19,000 members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

Appendix

A lighting engineer prepares her accounts on the cash basis for the year to 30 April 2020 (taxed in 2020-21), and which show a profit of £35,000. The pandemic means that her business dried up and in the year to 30 April 2021 she is expected to make a loss of £5,000. Fortunately, she is eligible for the SEISS grants, and received £20,000 in 2020-21 (grants 1 to 3) and is expected to receive around £14,000 in 2021-22 (grants 4 and 5).

- Taxable income in 2020-21 will, therefore, be £55,000 (a 'normal' year's trading profits of £35,000, plus £20,000 of SEISS grants) – meaning that £5,000 will be taxable at the higher rate.
- Taxable income in 2021-22 will, therefore, be just £9,000 (the 'COVID' year's loss of £5,000, plus £14,000 of SEISS grants) – not even enough to utilise her personal allowance of £12,570.

Therefore, treating SEISS grants as taxable in the tax year of receipt, as opposed to the normal basis of taxation of self-employed income based on accounting periods, can give rise to some unfair outcomes.

Had the grant been taxed as income during the accounting period in which it was received, these extreme fluctuations would be avoided. She would have had:

- Taxable income in 2020-21 of £35,000 (her 'normal' year's trading profits).
- Taxable income in 2021-22 of £15,000 (her 'COVID' year's losses offset by the SEISS grants received during that accounting period)
- Taxable income in 2022-23 would be based on the accounting period to 30 April 2022, which would be a period of recovery for her businesses, plus the expected £14,000 of SEISS grants.

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The Chartered Institute of Taxation
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