

Guidance on the treatment, and corrective action necessary, in relation to errors regarding the coronavirus job retention scheme

This guidance has been drawn up to help members working with clients who have made claims under the Coronavirus job retention scheme to help them comply with relevant professional obligations under Professional Conduct in relation to Taxation (PCRT). Ultimately it is envisaged that it will be included as guidance within PCRT but in the meantime it is issued as standalone guidance for CIOT members.

Introduction

This guidance is intended to provide assistance in relation to the steps to take if you become aware of errors in coronavirus job retention scheme (CJRS) claims. Whilst this guidance specifically addresses CJRS claims, the fundamental principles and requirements set out in PCRT would also apply to other COVID support administered by HMRC or other authorities, such as self-employment income support scheme (SEISS) claims.

This guidance has been reviewed by HMRC in January 2021 and addresses what we believe are likely to be the most common scenarios.

The guidance is intended to reflect the unusual circumstances surrounding the CJRS and HMRC has said that "We will not be actively looking for innocent errors in our compliance approach" in relation to CJRS. The circumstances include:

- It was introduced quickly and at a time of great uncertainty and confusion
- Guidance was updated multiple times and often came quite late in the process
- Claimants were directed to follow the guidance issued by HMRC rather than the legislation (Treasury Directions)
- It is not easy to check claims by accessing historical guidance applying at the time a claim was made as much of this is now in National Archives rather than on gov.uk
- Errors will rarely come within the definition of being trivial (ie up to £200)²

Claims which were fraudulent must be repaid and, if not, the procedures in PCRT help sheet C would apply.

Other errors in claims should be addressed in the manner set out in the following table. Where a client is unwilling to take corrective action, the procedures in help sheet C would apply.

For the avoidance of any doubt, the CIOT consider that CJRS claims fall within the scope of PCRT. We understand that HMRC also considers the principles set out are broadly consistent with the standards required under HMRC's Standards for Agents³.

¹ https://www.gov.uk/guidance/pay-coronavirus-job-retention-scheme-grants-back

² https://www.tax.org.uk/sites/default/files/Errors helpsheet 1 March 2019.pdf see paragraph 16

³ https://www.gov.uk/government/publications/hmrc-the-standard-for-agents/hmrc-the-standard-for-agents

In cases of fraud or where clients refuse to correct innocent errors in relation to claims, members must consider whether they need to make an AML Suspicious Activity Report to the National Crime Agency. Please note that a member's AML obligations are not met by making a report to the <u>Coronavirus fraud helpline</u>.

Further information regarding overpaid CJRS grants, including penalties applicable, can be found in <u>compliance check fact sheet 48</u>. Information is also available on gov.uk on <u>how to Pay Coronavirus Job Retention Scheme grants back</u>.

The Chartered Institute of Taxation

January 2021

References

- 1. Page entitled 'Claim for wages through the Coronavirus Job Retention Scheme', section 'If you have not claimed enough'.
- 2. Page entitled 'Pay Coronavirus Job Retention Scheme grants back', section 'If you've overclaimed'.
- 3. For these purposes, HMRC consider a 'reasonable period' as ending, for companies, on the expiry of 12 months from the end of the accounting period in which the grant was received, and for other businesses on 31 January, after the end of the relevant tax year; or the date when an assessment is issued under paragraph 9, Schedule 16, if earlier.

Results in:	Too little grant claimed	Too much grant	Insufficient salary paid to employee	Excessive salary paid to
Scenario:		claimed		employee
Correct underlying facts,	N/A - No further action is	N/A - No further	N/A – If the grant represents 80% of	N/A - If the grant represents
reasonable interpretation	necessary as the claim would	action is	salary and that has been paid to the	80% of salary and that has been
of the guidance in force at	be considered to be correct.	necessary as the	employee then no further action is	paid to the employee then no
the time of the claim	However, if another	claim would be	necessary in relation to the claim as it	further action is necessary in
	interpretation of the	considered to be	would be considered to be correct.	relation to the claim as it would
	guidance is reasonable,	correct.	However, action may be necessary by	be considered to be correct.
	which would result in a		the employer if the employee is paid	However, action may be taken
	higher claim, it may be		otherwise than in accordance with their	by the employer if the
	possible to increase the		furlough agreement / employment	employee is paid otherwise
	claim in accordance with the		contract (outside the scope of this	than in accordance with their
	time limits and procedures		guidance).	furlough agreement /
	set out on GOV.UK. 1			employment contract (outside
				the scope of this guidance).
Correct underlying facts,	The grant claim is incorrect.	The grant claim is	If the employee has not been paid the	Action may be taken by the
unreasonable	It may be possible to	incorrect.	minimum of 80% of a reasonable	employer if the employee is
interpretation of the	increase the claim, to correct	The overclaimed	interpretation of pay for the time	paid otherwise than in
guidance in force at the	it, in accordance with the	amount would	furloughed, this would invalidate the	accordance with their furlough
time of the claim	time limits and procedures	need repaying in	claim in respect of those employees	agreement / employment
	set out on GOV.UK. 1	accordance with	affected and could result in an income	contract (outside the scope of
	Further action is necessary in	the time limits	tax charge arising under paragraph 8,	this guidance).
	relation to the grant if this	and procedures	Schedule 16 of the Finance Act 2020.	
	results in the employee	set out on	However, the claim will not be	
	being underpaid (see right).	GOV.UK. 2	invalidated if the employer makes good	
			any shortfall to their employees within	
			a reasonable period. ³	

Incorrect underlying facts, reasonable interpretation of the guidance in force at the time of the claim The grant claim is incorrect. It may be possible to increase the claim, to correct it, in accordance with the time limits and procedures set out on GOV.UK. The grant claim is incorrect. It may be possible to incorrect. The grant claim is incorrect. The grant claim is incorrect. The grant claim is incorrect. If the employee has not been paid the minimum of 80% of a reasonable interpretation of pay for the time furloughed (in this case because of incorrect underlying facts), this would invalidate the claim in respect of those employees affected and could result in this guidance).	
of the guidance in force at the time of the claim increase the claim, to correct it, in accordance with the time limits and procedures set out on GOV.UK. The overclaimed amount would need repaying in accordance with invalidate the claim in respect of those interpretation of pay for the time furloughed (in this case because of incorrect underlying facts), this would invalidate the claim in respect of those	
it, in accordance with the time limits and procedures set out on GOV.UK. 1 amount would need repaying in accordance with set out on GOV.UK. 1 amount would invalidate the claim in respect of those invalidate the claim in respect of those accordance with their furloughed (in this case because of incorrect underlying facts), this would invalidate the claim in respect of those accordance with their furloughed (in this case because of incorrect underlying facts), this would invalidate the claim in respect of those	
time limits and procedures set out on GOV.UK. 1 need repaying in accordance with invalidate the claim in respect of those contract (outside the scope	
set out on GOV.UK. 1 accordance with invalidate the claim in respect of those contract (outside the scope	of
	ot
Further action is necessary in the time limits employees affected and could result in this guidance).	
relation to the grant if this and procedures an income tax charge arising under	j
results in the employee set out on paragraph 8, Schedule 16 of the Finance	
being underpaid (see right). GOV.UK. 2 Act 2020.	ļ
However, the claim will not be	ļ
invalidated if the employer makes good	ļ
any shortfall to their employees within	ļ
a reasonable period. ³	ļ
Incorrect underlying facts, The grant claim is incorrect. The grant claim is If the employee has not been paid the Action may be taken by the	
unreasonableIt may be possible toincorrect.minimum of 80% of a reasonableemployer if the employee is	ļ
interpretation of the increase the claim, to correct The overclaimed interpretation of pay for the time paid otherwise than in	ļ
guidance in force at the it, in accordance with the amount would furloughed (in this case because of both accordance with their furloughed)	gh
time of the claim time limits and procedures need repaying in incorrect underlying facts and an agreement / employment	ļ
set out on GOV.UK. 1 accordance with unreasonable interpretation of contract (outside the scope	of
Further action is necessary in the time limits guidance), this would invalidate the this guidance).	ļ
relation to the grant if this and procedures claim in respect of those employees	ļ
results in the employee set out on affected and could result in an income	ļ
being underpaid (see right). GOV.UK. 2 tax charge arising under paragraph 8,	ļ
Schedule 16 of the Finance Act 2020.	ļ
However, the claim will not be	ļ
invalidated if the employer makes good	ļ
any shortfall to their employees within	ļ
a reasonable period. ³	ļ