

A voyage of discovery

Mike Walden and Ikraam Petker discuss the remit of HMRC's Taxpayer Protection Taskforce and have some advice on what can be expected of it

In the March 2021 Budget, Chancellor Rishi Sunak announced a significant investment of over £100 million into the formation of the HMRC Taxpayer Protection Taskforce unit.

The investment will include the recruitment of over 1,265 inspectors who will form this new unit, with the aim of cracking down on erroneous or fraudulent Coronavirus Job Retention Scheme (CJRS), Self-employed Income Support Scheme (SEISS) and Eat Out to Help Out claims. While external recruitment is ongoing, many of the appointments will come from existing HMRC staff who have been reassigned and given a remit to target this activity.

This activity is in line with HMRC's recent increased employment of Fraud Investigation Service ('FIS') Inspectors tasked with tackling the UK tax gap (the difference in the amount of tax that should in theory be paid to HMRC, compared with the tax actually paid to HMRC). In 2020 the tax gap was estimated to be £31 billion. HMRC estimate the fraud and error arising from CJRS claims to be 5-10%, which based on the current total claims of £57 billion, could be up to £5.7 billion.

HMRC activity

As per HMRC's statutory guidance, if you have overclaimed a CJRS grant and not repaid it, you need to inform HMRC within the notification period. The notification period is the latter of 90 days after you receive the CJRS grant you are not entitled to, or 90 days after the date circumstances changed so that you were no longer entitled to keep the CJRS grant.

HMRC may charge a penalty if you do not inform them of an overclaimed CJRS grant within this period. The main factor when determining any such penalty would be whether you knew you were entitled to the CJRS grant when you received it, or it became repayable because your circumstances changed.

Despite this statutory requirement, HMRC felt inclined to issue 'nudge' letters to employers, recommending businesses check any CJRS claims made. The nudge letters provided employers with another opportunity to repay any overclaimed amounts, with no penalty, irrespective of the original behaviour. In addition, on 9 July 2020 HMRC released a statement announcing the first arrest made in relation to a suspected fraudulent CJRS claim of £495,000. It was later confirmed that eight other individuals were arrested in a linked investigation.

With the increased investment and recruitment from HMRC into their workforce, it has been no surprise to hear that HMRC currently have over 10,000 on-going enquiries into potentially inaccurate CJRS furlough claims. With the ever-changing guidance and legislation, it is likely that many of these enquiries may require repayments and penalties could fall due. These errors could also result in the publication of the claimant company's details, if HMRC conclude that a CJRS grant has been fraudulently claimed. In light of full transparency and more notably as an attempt to discourage abuse of the CJRS scheme, HMRC have published

a list of over 880,000 employers who made use of the furlough scheme each month from December 2020.

Mid-size businesses

Grant Thornton UK LLP surveyed UK mid-sized businesses, regarding their use of the furlough scheme and found that almost half have made use of the scheme during the last year. Some 83% of those who had made claims have since reviewed these and 13% found errors which required correcting. Furthermore, 16% of businesses had not yet reviewed their initial CJRS claim to ensure it was correct.

David Francis, head of tax dispute resolution, Grant Thornton UK LLP, commented on these statistics stating: “The Coronavirus Job Retention Scheme has provided critical financial support to over one million businesses across the country throughout the Covid-19 pandemic.

“The guidance for the scheme has been updated many times since first issued and the focus for many will have been on speed, due to necessity, which may have impacted compliance. While the majority of claims will have been made in good faith it is inevitable that errors may have been made, however unknowingly, in many applications.

“With HMRC investigations building momentum and the introduction of the new Taxpayer Protection Taskforce, it’s critical that businesses are checking their claims for potential errors and gathering the necessary evidence that demonstrates the financial context and internal discussions around their furlough application.”

Our expert advice

There are so many moving parts to the claim process that it is important to take a holistic view. When carrying out reviews, we hold conversations with people at all levels within the business. As with all things HMRC, records are key, so accurate time and pay records are important. Where any assumptions or generalisations have been made this should be documented to make it clear not only what has been done, but why.

The consequences of an inaccurate claim fall within a range. HMRC have said they aren’t targeting simple errors through their taskforce work; however, should these be identified, businesses may face penalties up to 100% of the inaccurate claim (as well as having to repay it), and the claimant company’s details may be published. Given current public sentiment, for many businesses, the reputational damage of being associated with an inaccurate of false claim could be dire.

Those businesses that have made CJRS claims must carry out a review of their claim. The risk of inaccuracy is significant, and HMRC will be seeking to recoup overclaimed amounts. Our advice is to carry out a review early, fully document what has been checked and how, then keep this should HMRC request this later. Remember, as with other inaccuracies overclaims are covered by the discovery assessment legislation (TMA70 S29(1)), which means that this could be identified 20 years down the line. If issues are identified, organisations should make a full disclosure to HMRC to put it right.

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