

CJRS, tips and tronc: the changes explained

BDO's John Chaplin looks at two issues affecting hospitality businesses – the furlough scheme and gratuities

Employment tax issues can have a major impact on hospitality businesses. Two of the hottest topics in this arena right now stem from past CJRS claims and looking ahead to tips and tronc changes in the future.

Our latest [Restaurants and Bars report](#) and [Hotel Britain report](#) also looks back at performance in 2021 and ahead at the trends we expect to see in 2022.

Coronavirus Job Retention Scheme Claims

One of the areas we are constantly discussing with our clients is the possibility of HMRC carrying out a review of their CJRS claims, that could potentially lead to repayments of CJRS grants, paying employees underclaims and the prospect of penalties.

Our experience from reviewing claims is that in most instances, errors have been made, which is understandable when we know the calculations are not at all straightforward and there are over 400 changes to HMRC's own guidance on the subject.

Some are unsure whether errors have been made and if it would be best to wait for HMRC to knock on the door instead of looking at beforehand. Our specialist team believe that a proactive approach should be taken, not only to reduce any potential penalties arising from non-disclosure or securing agreement to over and under claims, but also to free up the internal resources that would otherwise be needed dealing with the line-by-line reviews from HMRC that are coming.

Headlines you should be aware of:

- HMRC are actively investigating CJRS claims made by the Leisure and Hospitality sector, largest claims first and particularly those that have not responded to CJRS nudge letters.
- HMRC allocated 150£m resource to review CJRS claims with a 300 strong task force.
- HMRC's approach to an investigation is a line-by-line review of all claims and will not enter into negotiation based on sample extrapolation exercises.
- HMRC estimate that 8.7% of claims are incorrect – out of total claims of 70£bn it means HMRC consider there is a potential yield of around 6£bn.
- HMRC's hard line is that where employees are underpaid and the business do not repay the amounts to employees, HMRC will throw out the entire claim for that month.
- HMRC's view is that if a claim has not been prepared/reviewed by professional advisers, any errors would be because of reasonable care not being taken and therefore increasing the potential penalty.
- Where voluntary unprompted disclosures are made, it is possible to secure a 0% instead of 30% plus penalty.
- CJRS is complex in the sector because of numerous payroll runs/transient work force/employees not on fixed monthly salaries.
- CJRS legislation implemented overnight with 35 areas of risk; over 400 changes to HMRC's guidance; and 4 versions with differing rules.
- The amount of the CJRS grant claimed and confirmation that the figure is correct is subject to a statutory Corporation Tax return.

Case studies

Case Study – “A hotel chain with over 1000 employees claimed over 1£m of CJRS per month. Managers at each hotel were separately responsible for making that hotels’ CJRS claims. Fortunately, an external review of the processes used, identified significant amounts overclaimed – this meant that these could be repaid, and an agreement struck with HMRC that no penalties would be sought as the errors were voluntarily disclosed.”

Case Study – “To prevent the risk of overclaiming CJRS, a restaurant chain decided it would be easiest to calculate furlough pay using the lower of the three tests for calculating relevant pay. Unfortunately, this resulted in an underpayment of furlough pay to employees: this error would have, invalidated all of their CJRS claims – a substantial amount. Fortunately, an external review identified the mistake so that payments to employees could be rectified before HMRC raised an enquiry into their claims.”

Changes to tips, gratuities and discretionary service charges

Following consultation, the government had announced that an Employment Bill will include reforms to the way in which tips can be managed by establishments, to ensure that employees receive the full tip. The changes were expected to apply from April 2023, however, the Bill was not listed in the Government’s legislative programme announced in the Queen’s speech on 10 May 2022, so it is not clear when, or if, the proposals will be implemented.

The original intention of the legislation was to make it illegal for employers to withhold amounts from tips, whether these are received through a cash or card tip/gratuity or a discretionary service charge. The legislation was also to require employers to comply with a Statutory Code of Practice that would outline how tips should be distributed to employees to ensure fairness and transparency. This would mean that the employer must put in place a formal tip policy and ensure that it is followed in practice. Employees were to gain the right to request information relating to an employer’s records on tipping, to assist with bringing a claim against an employer where rules have been broken. Any credible claims brought by an employee would go to an employment tribunal which would have the power to compensate for any failures to operate the legislation properly, and fine the employer.

How should tipping arrangements work now?

Currently, employers may apply a discretionary service charge to bills. Legally, the service charge belongs to the employer until it is transferred to an employee in full or with a deduction made by the employer. The service charge can be transferred to the employee by the employer directly or by a Troncmaster where a tronc scheme is in place. Typically, deductions are made from the service charge to cover certain costs such as credit card charges or the cost of administering and paying the service charge to employees. The change in legislation is expected to prevent deductions such as these from the tips received by employees.

Therefore, where an employer makes deductions from tips for items other than tax/NIC (where applicable), these will need to stop. This will of course have a cost impact to the employer and, depending on the level of deductions, this may be significant. Where a tronc scheme is in place, it is anticipated that the implementation of these rules will still allow the use of a tronc to manage and allocate the tips independently of the employer.

What should the hospitality sector do to prepare?

All employers whose staff receive tips will be required to put in place a tip policy, or review and adapt their existing policy if this legislation is implemented in the future. The policy would need to be in line with the Statutory Code of Practice, which we expect to be published before the legislation takes effect.

Other issues companies will need to consider in advance of the proposed changes include:

- How would the loss of deducted amounts from tips or a discretionary service charge impact the business?
- Should we change or even remove the service charge altogether?

- What other financial adjustments would we need to make to compensate for a potential loss of income?
- Will our current tronc system be compliant with the new legislation?

While these changes may be delayed or abandoned for economic reasons, it is still important for employers to make sure that they fully comply with the current rules on tips. Whenever there are major changes in the pipeline for a specific tax area, HMRC usually takes the opportunity to have a close look at tax compliance under the current rules. We would expect to see more investigations on this area in the future, indeed, if the proposed legislation is abandoned altogether by the Government, it is quite likely that instead it will require HMRC to be much more vigorous in enforcing the current rules.

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