

UK TAX MEASURES TO HELP AND SUPPORT BUSINESS DURING COVID-19 - AN UPDATE

This Client Alert is an update of part of a document first published on 25 March 2020.

The UK has introduced a series of measures to help support people, jobs and businesses in the face of COVID-19.

This Client Alert provides an overview of some of the steps taken in relation to Taxation and outlines how those steps are expected to work in practice.

For information on **UK Government Measures** and **Judicial and Regulatory Measures**, please see our separate client updates on these topics.

VAT Payment Deferral

VAT payments (other than import VAT) due between 20 March 2020 and 30 June 2020 have been deferred until 31 March 2021. Deferral is automatic. HMRC will not charge interest or penalties on any amount deferred. If a business is in a position to reclaim VAT, HMRC will repay that VAT when it is due (i.e. without deferral).

Import VAT and customs duty due on 15 April 2020 and 15 May 2020 could be deferred where a business experiencing severe financial difficulty due to COVID-19 contacted HMRC to agree an extended payment period.

VAT and Customs Duty Waiver

From 31 March 2020 until 31 July 2020, VAT and import duty on supplies from outside the EU of vital medical equipment (including ventilators, coronavirus testing kits and protective clothing) have been waived. Claims for relief can be made in respect of imports by or on behalf of public bodies or authorised non-state bodies (i.e. charitable or philanthropic organisations approved by a competent authority; authorisation can be applied for where a body is not already authorised). A disaster relief agency, importing goods for free circulation to meet its needs during the COVID-19 outbreak, can also claim relief.

Extension of Zero-rating for VAT Purposes to Electronically-supplied Books

In order to promote, support and maintain literacy, the extension of zero rating to electronically supplied books (including booklets, brochures pamphlets, leaflets, newspapers, journals, periodicals, children's' picture books and painting books), permitted by Directive 2018/1713 and which the Government had planned would be introduced from 1 December 2020, was brought forward to 1 May 2020.

Temporary Extension of Zero-rating for VAT Purposes to Personal Protective Equipment

Zero rating applies, to supplies of equipment to provide protection from infection, made, between 1 May 2020 and 31 July 2020.

Postponement of VAT E-commerce Package Until 1 July 2021

The EU Commission has proposed extending the implementation date for the EU's reforms to the VAT treatment of B2C cross-border e-commerce supplies by six months to 1 July 2021.

Postponement of VAT Construction Industry Reverse Charge Until 1 March 2021

On 5 June 2020, HMRC published a policy paper (Revenue and Customs Brief 7 (2020)) and on the further delay of the introduction of the reverse charge on construction industry services from 1 October 2020 to 1 March 2021 (detailed guidance on the reverse charge was also published).

Income Tax Deferral for the Self-Employed

The instalment of income tax due on 31 July 2020 has been deferred until 31 January 2021.

Repayment of Corporation Tax Instalment Payment on Account

On 16 June 2021, HMRC updated its guidance (CTM 92650) in relation to the evidence it will require if a company wishes to make a repayment claim before the end of the accounting period.

Treatment of Expenses and Benefits Provided to Employees

On 6 May 2020 HMRC published guidance (updated on 12 June 2020) on the income tax treatment of certain expenses and benefits, including: living accommodation, volunteer fuel mileage costs, transport costs, free or subsidised meals, company car 'availability', salary sacrifice, employer loans, working from home and reporting to HMRC.

Income Tax and National Insurance Contribution Exemption for Employer Reimbursed Home Office Expenses

On 22 May 2020, the day after regulations (SI 2020/524 and 2020/525) were laid before the House of Commons, HMRC published a policy paper outlining a new exemption that will apply for income tax and national insurance contribution purposes where an employer reimburses expenditure incurred by an employee, on or after 16 March 2020 and before 6 April 2021, and that expenditure is to acquire:

- equipment obtained for the sole purpose of enabling the employee to work from home as a result of the coronavirus outbreak; and
- the provision of that equipment would have been exempt from income tax under section 316 of Income Tax (Employment and Pensions) Act 2003 if that equipment had been provided directly to the employee by or on behalf of the employer.

Taxation of "Coronavirus Support Payments"

On 29 May 2020 HMRC published a draft of provisions which are to be introduced during the Report Stage of the Finance Bill on 1-2 July 2020, providing for how "coronavirus support payments" are to be brought within the charge to corporation tax or income tax.

A “coronavirus support payment” is defined as:

- (a) the coronavirus job retention scheme;
- (b) the self-employment income support scheme;
- (c) any other scheme that is the subject of a direction given under section 76 of the Coronavirus Act 2020 (*Functions of HMRC in relation to coronavirus or coronavirus disease*);
- (d) a coronavirus business support grant scheme¹; and
- (e) any scheme specified or described in regulations made under by HM Treasury.

The draft legislation:

- imposes a charge to tax equal to 100% of a coronavirus support payment where a person was not entitled to that payment;
- imposes joint and several liability to income tax on a director, shadow director or other person involved in the management of the company if certain conditions are fulfilled, including that (i) that individual knew (at the time tax first became chargeable in respect of a coronavirus support payment) that the company was not entitled to that coronavirus support payment and (ii) the company is either subject to an insolvency procedure or there is a serious possibility of the company becoming subject to an insolvency procedure; and
- provides for a penalty on a failure to notify HMRC of the liability to tax to be imposed as though that failure were deliberate and concealed.

HMRC Guidance on Determining Whether There Has Been a Change in the Nature of a Trade and the Deductibility of Certain Types of Expenditure in Light of COVID-19

On 4 June 2020, HMRC published guidance (BIM 4800) indicating, amongst other things, that:

- A business that already manufactures clothing and begins to make gowns and face-masks using the same staff and premises should be treated as extending its existing trade (rather than commencing a new trade).
- A business that closes its doors to customers as a result of the lockdown, and intends to continue trading after lockdown restrictions have been lifted, should not be regarded as having ceased trading, provided that either the same or similar activities are indeed resumed after the lockdown.

¹ As at 29 May 2020 this included: (i) the small business grant fund described in guidance published by the Department for Business, Energy & Industrial Strategy (DBEIS) on 1 April 2020; (ii) the retail, hospitality and leisure grant fund described in that guidance; (iii) the local authority discretionary grants fund described in DBEIS guidance published on 13 May 2020; and (iv) the schemes corresponding to the small business grant fund, retail and hospitality grant fund and local authority discretionary grants fund in Scotland, Wales and Northern Ireland.

- Where expenditure is made for a philanthropic, rather than business purpose, HMRC will regard that expenditure as not being incurred wholly and exclusively for the purposes of a trade - and, as such, it will be non-deductible (notwithstanding the safe harbour available where an expense has an incidental non-trade benefit).
- Profit foregone on goods supplied at a discount should not be considered to be a gift, provided that transaction occurs in the course of a trade and the trader's costs are covered.

Time to Pay Arrangement (TTPA)

A TTPA provides for the deferral of tax payment(s) through the exercise of HMRC's discretionary powers.

During the outbreak, the interest on deferred tax payments will be waived. Interest on unpaid tax continues to run at 3.25% (although the rate of interest on corporation tax instalments, irrespective of whether a TTPA applies, has been reduced to 1.25%).

A taxpayer is required to:

- satisfy HMRC that the taxpayer 'cannot pay' the tax liability on the actual due date(s); and
- offer the best payment proposals that the taxpayer can realistically afford.

However:

- if a taxpayer's ability to pay improves, the taxpayer must contact HMRC and increase payments/clear the debt; and
- interest continues to run on tax paid after the date on which the tax was originally due.

HMRC is understood have issued additional internal guidance, which applies where a taxpayer's affairs come under the Large Business directorate' remit. According to this guidance, a TTPA must not include tax liabilities arising after 30 June 2020, nor include any PAYE or NICs amounts which have been covered by a Coronavirus Job Retention Scheme grant, and must involve an up-front payment of a proportion of the tax due.

HMRC has established a dedicated helpline for 'time to pay' arrangements: +44 (0)800 0159 559.

UK Residence and COVID-19-related Stays in the UK

HMRC has published guidance indicating that remaining in the UK may be regarded as occurring in "exceptional circumstances" if an individual:

- is quarantined or advised by a health professional or public health guidance to self-isolate in the UK as a result of the virus;
- finds that that individual is advised by official Government advice not to travel from the UK as a result of the virus;

- is unable to leave the UK as a result of the closure of international borders; or
- is asked by his or her employer to return to the UK temporarily as a result of the virus.

However, the statutory cap of 60 days that can be disregarded still applies.

Legislation will be introduced during the passage of the Finance Bill 2019-2021 through Parliament to disregard days spent between 1 March 2020 and 1 June 2020 by a foreign key worker (e.g. an anaesthetist, or an engineer working in ventilator design and manufacture) who has skills required to combat the pandemic in the UK.

HMRC, while stating that it is "sympathetic" to questions relating to corporate residence, has taken the view that its existing guidance, under which HMRC takes a "holistic" view, is sufficient. HMRC notes that a company will "not necessarily" become UK resident because "a few board meetings are held here, or because some decisions are taken in the UK over a short period of time. This may seem to provide rather less reassurance than has been provided, for example, by the Irish Revenue in a similar context, but on 5 May 2020 HMRC updated its guidance to state that HMRC "believes" that its guidance is "consistent" with the guidance published by the OECD on 3 April 2020: *OECD Secretariat Analysis of Tax Treaties and the Impact of the COVID-19 Crisis*.

DAC 6

On 19 June 2020 the EU Commission issued a new Directive allowing Member States to delay the start of reporting under DAC 6 so that:

- the need to report a reportable cross-border arrangement where the event triggering a report occurred between 25 June 2018 and 30 June 2020 may be deferred to 28 February 2021; and
- where an event giving rise to an obligation to report occurs on or after 1 July 2020, the 30-day period for reporting a cross-border arrangement begins on 1 January 2021.

HMRC has announced (IEIM 800010) that the UK will take advantage of this additional flexibility and the start of DAC 6 reporting obligations in the UK will, therefore, be delayed accordingly.

HMRC Administrative Measures

HMRC has ceased stamping original documents and digital copies must be submitted instead and has permitted printed signatures on IHT 100/400 forms where a professional is acting; HMRC has also required that stamp duty, stamp duty reserve tax and inheritance tax must be paid electronically (rather than by cheque).

The date by which an employer that has an agreement to operate Class 1 national insurance contributions in respect of employees from abroad that work in the UK or employees working abroad must submit certain information to HMRC has been extended by two months to 31 May 2020.

HMRC has stopped accepting requests for non-statutory clearance by post; requests must be sent by email.

On 27 May 2020 HMRC stated that it would extend the period within which an option to tax in relation to land should be notified to it for VAT purposes from the usual 30 days to 90 days where the decision to opt to tax was made between 15 February and 30 June 2020.

On 15 May 2020 HMRC announced that, until further notice, HMRC will accept a form IHT100 that is not physically signed from an unrepresented trustee or from a professional agent.

HMRC is understood to be accepting scanned VAT registration applications: an application from a UK business should be sent to vrs.newregistrations@hmrc.gov.uk and from an overseas business to : vrs.overseas@hmrc.gov.uk.

Where a taxpayer disagrees with a review decision reached by HMRC, HMRC will not object if the taxpayer wishes to ask the First-tier Tribunal to hear the taxpayer's appeal after the expiry of the usual 30-day period, where both HMRC's review decision is dated February 2020 or later and the taxpayer asks the tribunal to hear the appeal within three months of the normal deadline.

On 4 June 2020, HMRC updated its guidance (INTM 161280) to indicate that where a foreign jurisdiction requires a 'wet' signature on a residence certificate, or an apostille, such a process may take 30 days because of the need for an HMRC officer to attend an HMRC office (rather than to work from home). HMRC has reached out to some of these jurisdictions to seek agreement to an alternative interim arrangement to minimise delay: for information on these interim arrangements (but not so as to request a particular certificate of residence), email: CerificatesOfResidenceTechQueriesBAI@hmrc.gov.uk.

On 10 June 2020, HMRC issued Employment Related Securities Bulletin 35 (June 2020) in which HMRC addressed a number of issues arising in the context of share schemes as a result of COVID-19, including providing that:

- where there has been no change that effects a valuation agreed by HMRC for Enterprise Management Incentive (EMI) purposes an EMI valuation agreement:
 - that would otherwise have expired at the end of ninety days, on or after 1 March 2020, may be relied upon for an additional thirty days; and
 - issued on or after 1 March 2020 is valid for 120 days (rather than 90 days);
- CSOP options granted prior to COVID-19 will continue to be "qualifying" options if an employee or full time director is furloughed;
- employee monthly contributions under a SAYE contract may be deferred for more than 12 occasions if the additional deferral is attributable to COVID 19; and
- COVID-19 may (in line with HMRC's general practice referred to below under '*HMRC Enforcement Action and Compliance Checks*') constitute a "reasonable excuse" for registering a new share scheme late, or filing a return late.

HMRC is giving further consideration, in particular to the challenges posed by COVID-19 to the EMI scheme.

On 22 June 2020 HMRC issued a policy paper Revenue and Customs Brief 9 (2020): delayed VAT repayments to overseas businesses, in which HMRC notified such non-EU businesses:

- that the settlement of refund claims submitted before 31 December 2019 in respect of the prescribed year 1 July 2018 to 30 June 2019 will be delayed beyond 30 June 2020; and
- what steps a business should take if that non-EU business is unable to obtain a certificate of status for the prescribed year 1 July 2019 to 30 June 2020.

HMRC has requested that new legal proceedings are served on it electronically (newproceedings@hmrc.gov.uk) rather than by post. Furthermore, on 5 June 2020, after consultation with the HM Courts Service in relation to the effects of COVID-19 on proceedings, HMRC updated its guidance relating to sharing information with a court or tribunal (IDG 40530).

HMRC Enforcement Action and Compliance Checks

HMRC has "paused" insolvency activity and will not petition for bankruptcy or winding-up orders (other than in cases of fraud or criminal activity), although HMRC is continuing to consider new CVAs, administrations and IVAs.

HMRC has indicated that where the terms of a voluntary arrangement allow a supervisor discretion, that discretion should be exercised "to the maximum" and that (without there being a need to contact HMRC) HMRC will support a minimum 3-month break from contributions.

HMRC is understood to be writing to taxpayers, who are undergoing compliance checks, suspending those compliance checks.

On 21 April 2020 HMRC updated its Internal Compliance and Operations Guidance Manual, in the context of the making of determinations under regulation 80 of the Income Tax (PAYE) Regulations 2003 (2003/2682), to make it clear that employer compliance activity had been "paused" until 30 April 2020. On 22 April 2020, HMRC made a similar change to its internal guidance in relation to business-specific compliance checks (the substance of which is withheld in accordance with the Freedom of Information Act 2000).

HMRC has informed the Chartered Institute of Taxation that HMRC will not extend the 30-day deadline for taxpayers written to by HMRC in February 2020 to report offshore assets, income and gains. However, HMRC will take a reasonable and proportionate approach where a taxpayer requests more time. HMRC is not writing further such letters to other taxpayers during April 2020.

HMRC has stated that it will consider COVID-19 a "reasonable excuse" for missing some tax deadlines (e.g. payment or filing dates); the relevant obligation must be fulfilled as soon as possible and an explanation must be provided of how the taxpayer has been affected by COVID-19.

Where a business has been affected by COVID-19, HMRC will allow a further three months for an appeal against any penalty dated February 2020 (or later); an appeal should be submitted as soon as possible and accompanied by an explanation that the delay is due to COVID-19.

HMRC and HM Treasury Consultations

On 28 April 2020 HMRC and HM Treasury announced that, having regard to the pressures on business due to COVID-19, the time limit for responses to a range of open consultations would

be extended to various dates falling between 15 August 2020 and 3 September 2020. In particular:

- Consultation on the taxation impacts arising from the withdrawal of LIBOR – closes on 28 August 2020.

Consultation on the Hybrid and other mismatches – closes on 29 August 2020.

- Consultation on the tax treatment of asset holding companies in alternative fund structures – closes on 19 August 2020.

Other Measures

We will endeavour to keep you informed of any new measures that are adopted in the coming days and weeks.

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