SQUIRE PATTON BOGGS

COVID-19: UK Tax

Measures and Waits

Perhaps understandably, the primary focus of the government to date has been on ensuring business has ready access to finance and boosting liquidity. There has actually been surprisingly little in terms of **pure** tax-related reliefs and relaxations so far. Expect that to change as the pandemic crisis continues to evolve.

Current Measures

That is not to say there have not been any tax-geared measures to support businesses. These include:

- **VAT payment deferral**: VAT that would otherwise have been due to HMRC between 20 March and 30 June 2020, has been deferred until the end of the 2020–21 tax year (i.e. 31 March 2021).

  All VAT-registered UK businesses benefit. The deferral applies automatically and no application is necessary. However, VAT returns must still be submitted as normal. Importantly, VAT refunds and reclaims will be paid by the government as normal.

  If VAT is paid by direct debit (DD), businesses wishing to take advantage of the deferral will need to contact their banks to cancel (or, if possible, suspend) the DD for the requisite period…and set it up again (or reactivate it) as soon as the deferral period is over.

- **Self-assessment income tax payment deferral**: Income tax self-assessment payments on account in respect the tax year 2019–20), that would otherwise be due (whether compulsory or voluntarily) on 31 July 2020, are deferred. This will be of particular interest and value to self-employed businesses.

  This is a deferral of tax due; it will become payable (along with any balancing payments due) on 31 January 2021.

  Again, the deferral applies automatically. No application is necessary and no penalties or interest for late payment will be charged during the deferral period. As for the VAT deferral, those that have set up to make payments on account by DD should contact their bank to cancel or temporarily suspend it.

- **Coronavirus job retention scheme (CJRS)**: Covered in depth elsewhere (see: COVID-19: UK Fiscal Measures: Phase Three and COVID-19: Coronavirus Job Retention Scheme: What Employers Need to Know), the CJRS supports UK employers to pay a part of the salary of employees' that would otherwise be laid off during this crisis.

  The CJRS enables employers to continue to pay up to 80% of furloughed employees' salary costs (up to £2,500 per employee per month), **plus**, crucially, the associated **employer** National Insurance Contributions (NICs) and, where relevant, minimum automatic enrolment employer pension contributions on that subsidised wage.

  Salaries paid to furloughed employees will continued to be subject to income tax and NICs as usual, and PAYE will need to be operated via normal payroll. Employers will also remain liable for employer NICs and, if any, the minimum automatic enrolment employer pension contributions.

- **Time to Pay**: Time to Pay is a pre-existing service offered by HMRC to taxpayers (covering all types of businesses) experiencing difficulties paying outstanding tax liabilities of any description.

  In response to COVID-19, HMRC has bolstered the Time to Pay service and set up an emergency helpline – 0800 024 1222, 8 a.m. – 4 p.m. (Monday to Friday; not bank holidays) – to meet the expected additional demand.

  HMRC will consider applications on a case-by-case basis. Possible arrangements include a deferment of tax due, paying amounts in instalments, suspending debt collection proceedings and the waiving of any penalties and interest accruing on unpaid tax. It is advisable to contact HMRC sooner rather than later if paying an amount of tax is going to prove difficult or impossible.

- **Statutory residence test**: For the purposes of assessing whether (or not) **individuals** are UK resident for tax purposes, days spent in the UK because the individual is self-isolating in the UK, or because the borders are closed, will be treated as an "exceptional circumstance". As a result, the additional days spent in the UK can be disregarded.

  There is still considerable uncertainty, and potentially significant tax traps for the unwary, in relation to the tax residence of **corporate** entities. Boards that are conducting meetings via electronic means for the purposes of practical necessity should be alive to the possibility of any unwelcome tax consequences.

- **Stamp duty:**

  - **Transfers of shares**: The Stamp Office has announced that it will not accept physical stock transfer forms (STF). Until told otherwise, taxpayers **must** pay stamp duty electronically and then **email** (stampdutymailbox@hmrc.gov.uk) details of the transaction, including an electronic version of the STF (or other instrument of transfer). Exceptionally, the Stamp Office will accept e-signatures, but the STF (or other instrument) should be completed as fully as possible. The Stamp Office will respond electronically. Physical stamps will not be affixed to the transfer instrument.

  - **Applications for group relief**: Similarly, until further notice, claims for relief from stamp duty (under section 42 of Finance Act 1930) for transfers between companies in the same group should not be posted to HMRC. Instead, taxpayers should send the claim (together with supporting documents) by **email** (stampdutymailbox@hmrc.gov.uk).

  Similar announcements have been made in relation to reliefs and exemptions on paper shares and obtaining opinions about stamp duty payments and penalties.

  Although not really measures providing relief, these announcements should help ease some administrative difficulties when completely forms. However, taxpayers should be aware that any application recently submitted by post may now need to be resubmitted electronically.

- **Non-statutory clearances**: HMRC is not currently accepting non-statutory applications for clearance in advance by post.

  Applications for clearance should instead be submitted by email to the relevant address, set out in the Annex applicable to the type of clearance or assurance being sought.

- **Pensions schemes**: In normal circumstances, scheme administrators (i.e. pension trustees) looking to provide a payment holiday on loans due from "connected parties" and rents on commercial properties held in registered pension schemes, HMRC expect the trustees to obtain an independent valuation to ensure that a payment holiday is on a commercial basis.

  In response to the pandemic, HMRC has relaxed that condition and will accept that any arm's length commercial decisions will not give rise to unauthorised payment charges.

Measures to Wait for

Extraordinary times demand extraordinary measures. With the COVID-19 pandemic, and its economic effect, evolving at such a rapid pace in the UK and across the globe, businesses and taxpayers should not be surprised if more tax-specific measures to support the economy are unveiled in due course.

Our experience across multiple jurisdictions suggests that some of the measures that might be expected include:

- **Administration and management**: Possible relaxation of reporting and compliance deadlines and the extension of tax payment windows.

- **Payment deferrals**: More deferrals of tax liabilities are possible.

  One obvious candidate for deferral would be corporation tax quarterly payments.

- **Enhanced tax deductions**: This could involve reducing limitations on claiming deductions (e.g. the corporate interest restriction) or accelerating and enlarging deductions (e.g. capital allowances).

- **Improved access to losses**: Again, measures in this area might include lifting restrictions (e.g. on the carry-forward [or back] of income and capital losses) or allowing taxpayers to realise deferred tax assets.

- **Relaxation of tax consequences of restructuring debt**: In certain circumstances, tax charges can arise where a debt is substantially modified or restructured. The rules can be overridden by specific tax rules that apply in particular circumstances (e.g. insolvency). No such rule exists for the impact of COVID-19 but it could be an area the government is looking at.

- **Rates**: A temporary reduction in a headline tax rate will enhance short-term liquidity.

  Taxes paid regularly (e.g. NICs and VAT) are particularly good candidates for this type of measure.

  The Coronavirus Act 2020 reserves emergency powers to the government to increase NICs thresholds (and the NICs Employment Allowance), suggesting this is an area where the government is already contemplating possible action.

- **Tax waivers**: A more dramatic intervention would be a tax waiver.

  Although likely to be a measure of last resort (and enormously expensive), the element of the government grant covering **employer** NICs under the CJRS is effectively a tax waiver.

- **Sector-specific tax reliefs**: Any combination of any of the above measures, but limited to specific sectors identified as particularly hard-hit by COVID-19, might also be expected.

  Possible candidates for targeted tax-geared assistance include healthcare, aviation (and other transport) and retail.

COVID-19 is Shaping Future Tax Policy

Finally, businesses and taxpayers should not underestimate the medium- and long-term impact that COVID-19 is going to have on UK, and global, tax policy.

As the Chancellor of the Exchequer said, when unveiling the Self-employment Income Support Scheme (SISS), "…it is now much harder to justify the inconsistent contributions between people of different employment statuses. If we all want to benefit equally from state support, we must all pay in equally in future."

Although that "aside" was clearly targeted at the differential in income tax and NICs treatment between the employed and self-employed, similar considerations around equity, consistency and fairness are likely to drive UK, and global, tax policy over the next decade at least.

Contacts

Mark C. Simpson
Partner, Leeds
T +44 113 284 7046
E mark.simpson@squirepb.com

Patrick Ford
Partner, Manchester
T +44 161 830 5014
E patrick.ford@squirepb.com

Timothy Jarvis
Partner, Leeds
T +44 113 284 7214
E timothy.jarvis@squirepb.com

Robert O'Hare
Senior Tax Policy Advisor, London
T +44 20 7655 1157
E robert.ohare@squirepb.com

37745/03/20