

The Coronavirus Job Retention Scheme is costing the UK government an estimated £14 billion a month and it is therefore little surprise that legislation will shortly be passed to allow HMRC to claw back funds from employers who have wrongly claimed under the Scheme.

It is of course entirely proper that employers which have used the Scheme fraudulently, for example, by knowingly over-inflating wage figures, failing to pay the funds on to staff or keeping employees working during furlough, should be held to account.

However, given that the guidance to the Scheme varied at times between the unclear and the completely contradictory, and that the calculations (especially post-June under the flexible component of it) have been quite gratuitously complex, there can be very few companies which can say with absolute confidence that they have not unknowingly overclaimed.

There is likely to be a limited period of time after the clawback legislation is passed in which employers can correct any errors and amend their claims with HMRC without penalty. That is how we believe that HMRC will try to head off employer defences based on the lack of timeliness, clarity, cohesion in the guidance issued at the time the first claims had to be made – yes, but since then we gave you a window in which to fix it and some guidance that didn't change the following week by which to do so. Once that amnesty is over, we think that the scope for stating overclaims to be unknowing will be much reduced.

It is therefore sensible to be proactive and address any potential miscalculations through an audit before HMRC comes knocking.

Have You Overclaimed?

Given the way in which the rules and guidance have evolved and the complexity of the calculation rules, in our experience errors have been quite common. Examples of points we would check are:

- Have the legal conditions for claims under the scheme been satisfied?
- Have fixed pay and variable pay employees been categorised correctly?
- Have the correct elements of pay been taken into account for variable pay employees?
- For variable pay employees, has average pay for 2019/20 and pay for the same period in 2019 been calculated in accordance with the HMRC guidance?
- Has salary sacrifice been dealt with correctly, both in terms of only claiming based on post-salary sacrifice salary and not deducting salary sacrifice amounts from the furlough pay to the employee?
- Have the eligibility criteria been operated correctly, for example in respect of new starters?
- Have calculations been done correctly for employees who joined recently with limited pay history?
- Have calculations been done in accordance with the guidance where an employee has only been furloughed for part of the claim period?

The updated rules for flexible furlough that apply from 1 July potentially add further complexity to the calculations and we can also assist with this.

Consequences of Overclaiming

- HMRC has given strong indications that it will be auditing employers' use of the Scheme
- HMRC is entitled to charge any amounts overclaimed under the Scheme as tax and to charge **penalties of up to 100%** of the amount overclaimed
- There is the potential for HMRC or the press to '**name and shame**' those that are found to have overclaimed, leading to negative PR and reputational damage
- Directors of now insolvent businesses can be held **personally liable** for the amount overclaimed



Furlough Audit Service – How You Can Benefit

We will review your furlough calculations and our experienced team of Tax and Employment lawyers will consider whether you have acted correctly in terms of eligibility for the scheme and the amount being claimed.

We will then provide you with a brief report highlighting any particular errors we have identified and make recommendations on how to rectify this.

The audit gives you comfort that you have not overclaimed under the Scheme and gives you the opportunity to amend your claim prior to any penalties being enforced by HMRC.

Our audit may also highlight where you may have underclaimed under the Scheme, allowing you to claim the full benefit of the government support on offer.



Why Choose Us?

- **Cost certainty**- Furlough audits are offered on a fixed fee basis, starting from **£3000 plus VAT**
- **Experience** – We are already working with a number of clients on furlough audits and we are familiar with where mistakes have been and are being most commonly made under the Scheme
- **Legal** – Our experienced Tax and Employment lawyers are best placed to advise on technical legal issues arising from the Scheme and how to address these with minimum legal risk (e.g. either with HMRC or in communications with employees)
- **Privilege** – All of our team members are able to provide legally privileged advice for you and the Board

Please get in touch to find out more.

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