Petitions Committee correspondence with HM Treasury regarding the Government response to e-petition 310515

Email from the Petitions Committee to HM Treasury, 23 June 2020

The Petitions Committee met today and considered HMT's revised response to an e-petition entitled "Coronavirus Support Package for Directors / Shareholders of small Limited Co's", to which your Department has responded.

We have received correspondence challenging a couple of points in the Government's response, and the Committee has agreed to request a revised response which addresses these points:

1. The response states that "Dividends are not covered by the CJRS. Income from dividends is a return on investment in the company, rather than wages", and that "under current reporting mechanisms it is not possible for HM Revenue and Customs (HMRC) to distinguish between dividends derived from an individual's own company and dividends from other sources, and between dividends in lieu of employment income and as returns from other corporate activity." We have received correspondence that has argued that under the law, certain shares are known as "employment related securities", which includes those held by owner directors who obtained their shares on incorporation. Dividends from these types of shares are therefore not "a return on investment in the company", but are legally a "benefit from employment related securities" exempt from further income tax or NI under schedule 22 of the finance act 2003.

2. The response states that "Expanding the scope would have required HMRC to collect and verify new information. This would have taken longer to deliver and put at risk the other schemes which the Government committed to delivering in a timely way." The correspondence we have received argues that the CJRS requires the reporting, usually by accountants, of those to be put on furlough, and that it would have been possible for income from employment related securities to have been included in this declaration, and hence no delay to the scheme.

Email from HM Treasury to the Petitions Committee, 3 July 2020

Thank you for your email on behalf of the Committee. I am responding on behalf of HM Treasury.

The Government has also received correspondence about those who operate through their own companies and pay themselves in dividends. The Government has worked with stakeholders and carefully considered the case for providing a new system for those who pay themselves through dividends. However, as the response to the petition makes clear, targeting additional support for those who pay their wages via dividends is much more complex than existing income support. This is a technical and complex subject.

It may be helpful if I explain the situation briefly.

Individuals may receive a dividend payment if they own shares in a company and it has made a profit. As the response to the petition makes clear, and has sometimes been misunderstood by correspondents asking for support, income from the distribution of profits from a company is distinct from the payment of a salary to a director. The shareholding represents an investment in the company and the payment of a dividend represents a return on those shares held in the company.

Gifts and awards of shares in companies, often known as employment related securities, are commonly used by employers to reward, retain or provide incentives to employees. They can be tax advantaged or non-tax advantaged. These may be provided to employees under a formal "scheme" or "plan", which will usually have a written set of rules, or as informal "one-off" awards of shares or grants of options. Where employees receive shares or other securities from their employer as a reward for their employment, then the money's worth of the shares, less anything the employee pays for them, will normally be taxed as earnings. It is correct that all shares and securities acquired in connection with an employment come within the scope of the employment-related securities regime, including shares acquired by directors or employees on the formation of a company, but this point does not change the position set out in the response to the petition.

These issues are immaterial to the practical challenges of creating a scheme for those who operate through their own companies and pay themselves in dividends. The Government has been clear these challenges have been the barrier to the provision of support that the petition requests. As the response to the petition sets out, under current reporting mechanisms it is not possible for HMRC to distinguish between dividends derived from an individual's own company and dividends from other sources, and between dividends in lieu of employment income and as returns from other corporate activity. Unlike announced support schemes, which use information that HMRC already holds, it would require the submission of information that HMRC could not efficiently or consistently verify to ensure payments were made to eligible companies, for eligible activity. Your correspondent's particular suggestion, like others, does not resolve this for several reasons including:

- The reporting of the provision of employment related securities to HMRC for tax purposes in any given year does not provide an understanding of the source of income from dividends in any given year. Income received from being a company director is recorded on the employment pages of a tax return, but there is no box on the SA102 Self Assessment return capturing the dividend income from a directorship; dividends and other qualifying distributions from UK companies are reported on the main SA100. As the Committee will be aware, this is not disaggregated to show the different sources because this is unnecessary for tax purposes. The suggestion of the link between the reporting of employment related securities and dividends suggested by your correspondent is therefore mistaken.
- Furthermore. HMRC cannot simply rely on a declaration from accountants. The information would still need to be verified and HMRC could not efficiently or consistently verify to ensure payments were made to eligible companies, for eligible activity. For example, detailed investigation would be required to verify the dividends were profits from trading activities, rather than other forms of activity that a company might also undertake (such as investment), and that those dividends were correctly apportioned between those activities. The Government has heard the suggestion made that HMRC could adopt a 'pay now, clawback later' approach. However, such an approach would be highly resource intensive to ensure appropriate compliance, and there is a high risk that incorrect or fraudulent payments could not be recovered, ultimately at a cost to UK taxpayers.

I hope, on behalf of HM Treasury, the explanation above sets out the position in relation to employment related securities and dividends for the Committee and explains why we feel the response to the petition already provided stands.