HM Revenue & Customs

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Meg Hillier
Chair
Public Accounts Committee
House of Commons
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Dear Ms Hillier,

Thank you for the Public Account Committee's report HMRC Performance report 2019/2020. In response to Recommendation 1:

"HMRC should, within six weeks of this report: publish an explanation for the reasons why it cannot help those freelancers and other groups that have been excluded from receiving any support and what would be required to determine eligibility for financial support for that group of taxpayers; and (1a) and:

HMRC should, within six weeks of this report consider the support it can provide for those taxpayers that have, due to the IR35 rules, moved onto payrolls and missed out on support from the COVID schemes, for example, by reviewing whether it can use an average of wages in the past three years to determine grants. (1b)."

Recommendation 1a

The department agrees with recommendation 1a to set out the reasons why certain citizens could not be supported by the scheme. HMT and HMRC continue to explore how to broaden support those affected by COVID-19 through its schemes.

The Coronavirus Job Retention Scheme (CJRS) has helped to pay the wages of people in 11.2 million jobs across the country, with more than £53 billion paid out in grants across the UK, protecting jobs that might otherwise have been lost. The Self-Employment Income Support Scheme (SEISS) has paid out almost £20 billion in grants to 2.7 million self-employed individuals whose businesses have been adversely affected by COVID-19.

To support businesses and employees through the next stage of the pandemic, the Chancellor announced in the Budget on 3 March 2021 the extension of the CJRS and SEISS until September 2021. Under these extensions, more people will be eligible for the schemes. This includes:

- Extending the Real-Time Information (RTI) for the CJRS to include employees that were employed on 2 March 2021 for claims starting from 1 May 2021. Based on early estimates, this means around 2.4 million more employees are potentially eligible for the CJRS. Neither the employer nor the employee needs to have previously claimed, or have been claimed for, under the previous versions of the scheme in order to make a claim under the extended CJRS.
- Expanding the SEISS grant to include those new to self-employment in 2019-20 who may now be able to claim the fourth and fifth grants. Around 600,000 more self-employed individuals may be newly eligible for the SEISS, bringing the total of potentially eligible to 3.7 million. The fifth and final SEISS grant will include a turnover test to ensure that the most generous support is targeted at those who need it most.

The Government has acknowledged that it has not been possible to support everyone in the way they might want. However, there is a £407 billion package of support which extends beyond the CJRS and SEISS.

Policy principles of the schemes

The schemes were designed with three principles in mind:

- **To target support at those who need it most.** That is why the CJRS was capped at £2,500 per month; and why the Government said that those eligible to claim for SEISS (grants 1-4) must have made profits of no more than £50,000 from self-employed activity and made at least half of their income from self-employed activity. The SEISS is not intended for those who might have relatively small amounts of trading income in addition to income from other sources, such as employment, property or pension income. Our most recently published statistics (25 February 2021) show that 1.4 million have trading profits that are less than their non-trading income and a further 0.5 million had a trading profit of £0 or made a loss.
- **To protect public money against error, fraud, and abuse, whilst reaching as many people as possible.** In order to enable the processing of claims quickly and easily, HMRC could only use the data already held in our systems to reference and validate claims. There was neither the time nor the operational capacity to create and validate new data sources**.** It was essential the Government balances its duty to support individuals with its responsibility to protect taxpayer money from fraud and abuse.
- To design the schemes so they would be operationally viable to run with customers getting the support they need, whilst also maintaining HMRC's wider services and functions.

Operational design

HMRC has used the most up to date and complete information sets possible to safely and quickly get support to customers who need it, whilst minimising the risk of error or fraud. PAYE RTI data is used to support CJRS claims, and SEISS has used the latest set of complete tax returns, originally from year 18/19, and moving to 19/20 for SEISS 4 and 5. For SEISS, HMRC undertook intensive data engineering work to ensure all its data sources could be leveraged.

A core design principle of the schemes was that they can reliably calculate eligibility using existing verifiable data already held on HMRC's systems to check claims. Without this, the department would need to rely on customers' own self-certification of information or the submission of new data that in turn would need verification. This verification would necessitate one on one manual inspection of every claim to differentiate the honest claim from those based on fraudulent declarations. Not only would this be beyond the operational capacity of HMRC, it would also still result in unacceptable level of residual fraud and error since it is not clear what other robust sources of information could be used to verify claims against. This would inevitably lead to significant delays in vital payments being made to claimants (for CJRS, 98.7% of claims were paid within 6 days, and SEISS, 98.9% of claims were paid within 6 days).

HMRC collects customer information that is necessary for the department's statutory function and the smooth running of the UK tax system. It is unlawful to collect and retain data that is not directly relevant to administering its functions and therefore the schemes were based on data collected as part of the department's original purpose which, for some groups, was insufficient to allow HMRC to target support. This restricted initial design. We have since scanned other sources of government data that could be used but found no additional data sets that could be reasonably encompassed.

Support for freelancers

The CJRS has been available to all employers with a PAYE system and all employees on PAYE regardless of their employment contract. Employees can be on any type of employment contract, including full-time, part-time, agency, umbrella, flexible or zero-hour contracts and be eligible for CJRS. Although we expect the employer to act within the employee's contract, the issue of broader employment rights is not relevant to a CJRS claim being successful. An individual can be eligible for CJRS regardless of their employment rights.

As such, freelancers and those on short term contracts could be eligible for the CJRS if they are on PAYE and meet the eligibility criteria

Integral to the purpose of CJRS is that the amounts paid to an employer must reimburse earnings paid by the employer to the employee and reported to HMRC through RTI. Therefore, a key design feature of CJRS is that there must be an employer through which to make a payment, and that the employee must be on that employer's payroll and reported to HMRC through RTI.

We recognise that some freelancers may not be eligible for CJRS because the nature of their contracts mean that they did not meet the RTI cut-off point. RTI submissions are necessary for the CJRS to operate at very significant scale, quickly and with limited manual intervention. The use of RTI allows HMRC to verify claims in the most efficient and timely way, ensuring payments can be made quickly while reducing the risk of fraud.

Without the use of RTI returns it would be difficult to verify claims without significant additional checks, which would delay payment for genuine claims.

The objective of the CJRS is to help employers impacted by COVID-19 retain their employees. As such, furlough is a decision for employers, in consultation with the employee. This requires an employer through which to furlough, otherwise it would require a fundamental change to the scheme.

The SEISS provides generous support to the self-employed, including freelancers, who meet the eligibility criteria.

Freelancers who are ineligible for the SEISS are likely to be those who get less than half of their income from self-employment. The design of the SEISS, including the eligibility, requires that an individual's trading profits must be at least equal to their non-trading income. This is intended to target support at those who need it the most, and who are most reliant on their self-employment income. Freelancers can also access the wider Government support package that is available.

Support for other groups

The Government has received many proposals and have considered each of them in detail. But as stated, we have needed to ensure we protect public money against error, fraud, and abuse. All options have introduced an element of self-certification which is difficult to verify and therefore introduces greater error and fraud challenges.

With regard to Company-Owner Managers, HMRC cannot accurately identify Directors who work for a company as opposed to inactive Directors and general investors. Estimates of the number of working Directors varies from 710,000 to 1.8 million. This compares to 3.3 million people who are identifiable in tax returns as receiving income from dividends. The 3.3m covers a diverse population including not only working Directors, but also inactive Directors, (such as the spouses or children of working Directors who are jointly listed as Directors of companies) and general investors. The latter groups would not be the intended target of support. Administering support to Directors would be dependent on information that Directors report on their Self-Assessment returns regarding any dividend income. This could result in more than 3 out of 4 grants going to people for whom income support is not intended, which would be neither a fair nor a responsible use of taxpayer money.

HMRC also does not have data to verify what parts of a Director's remuneration to support and therefore the amount of support to which they might be entitled. Dividend income could be coming from multiple sources including investments, and not just dividends in lieu of salary. Information from other sources cannot be used to determine which dividends are in respect of relevant company profits from a company in which a Director is working.

The Government has explored using other data sources to target support to working Directors, including other HMRC and Companies House data. Even with these sources of information, it is not possible to identify accurately an eligible population of companies or adequately target support to those Directors in need. Therefore, any scheme would require additional self-certification, which could require significant manual operations and be susceptible to significant error and fraud risk.

Further support available

Outside of the CJRS and SEISS schemes there is unprecedented support for businesses and individuals.

To support low-income families during this crisis, the Government is extending the temporary £20 per week uplift in the Universal Credit standard allowance by a further 6 months. The Government is also announcing a £500 one-off payment to provide similar support to eligible Working Tax Credit claimants.

This is just one part of a package of temporary welfare measures, which includes increases to the Local Housing Allowance rates for Housing Benefit and Universal Credit, which mean over 1 million households who rent privately will gain an average of £600 per year, a relaxation of the Universal Credit minimum income floor and measures to make Statutory Sick Pay and new style Employment and Support Allowance easier to access.

Other support made available includes delaying VAT payments, delaying Self-Assessment (SA) payments on account, arranging to pay SA tax bills in instalments, applying for Child Benefit, Restart Grants, the Recovery Loan scheme, business rates relief, and other business support schemes.

Broadening the net

Throughout the duration of the pandemic, HMRC has challenged itself on what other data sources could be used to facilitate claims and protect against fraud, error and abuse. For the CJRS, the Government continuously reviewed RTI cut-off dates to include as many employees as possible into the scope of the scheme. In addition to the Budget announcement, the RTI cut-off date has been extended previously. When the CJRS was extended in October 2020, the RTI cut-off date was moved from 19 March to 30 October 2020 which resulted in 4.8 million new employments being eligible for furloughing under the CJRS extension (this does include individuals who may have been furloughed under a previous role, but are now eligible under a different role), and last April 2020 the cut-off was extended from 28 February to 19 March which brought over 200,000 additional employees into scope of the scheme. In direct response to stakeholders, HM Treasury and HMRC adapted the CJRS to allow employers to bring back employees who had been furloughed for any amount of time and any shift pattern, while still being able to claim a CJRS grant for the hours not worked.

For the SEISS, the Government amended the terms to allow claims from self-employed parents who did not submit a tax return for 2018-19, or whose trading profits in 2018-19 were less than their other income, because they were pregnant or taking time out of their trade to care for their new-born or newly adopted child. The Government also opened the SEISS to self-employed army, navy and air force reservists who were previously ineligible as a result of their service. HMRC also works closely with customers to resolve their position if they think the underlying data HMRC is using is incorrect.

Future plans

As we have set out previously to the Committee, one of the administrative constraints has been the age and granularity of data held by HMRC on which claims could be made. In July 2020, the government published a new strategy to building a trusted, modern tax administration system. A modern system will work closer to real-time, allowing people and businesses to pay the right tax with ease. The strategy sets out a clear road plan for modernisation which, in future, should enable the departments to be more responsive in times of emergency and will also help individuals understand and engage with their tax position on an ongoing basis.

Recommendation 1b

The Committee was interested in the extent to which individuals who changed their working structure in response to the off-payroll rules may have missed out on COVID-19 support. The Government has carefully considered the support it can provide for individuals who may not be eligible for the CJRS and has moved the CJRS cut-off date which meant that many more individuals became eligible for support.

To ensure an acceptable level of fraud risk and to mitigate vulnerability to criminal attack, without compromising the speed at which the department need to pay out, the CJRS is based around the principle that data submitted by claimants must be able to be matched against verifiable data already held on HMRC's systems. This is assessed using employer PAYE Real Time Information (RTI) submissions to HMRC, which allows HMRC to verify claims in the most efficient and timely way, ensuring payments can be made quickly while reducing the risk of fraud.

For the first eight months of the CJRS, employees were eligible if they were on-payroll the day before the scheme was announced on 20 March 2020.

As mentioned above, in October, the CJRS extension cut-off date was moved from 19 March 2020 to 30 October 2020. This resulted in at least 4.8 million new employments being eligible for furloughing under the CJRS extension

For claim periods from 1 May 2021, the cut-off date will be 2 March 2021, the day before the announcement of this extension at Budget. This means that even more employees will become eligible for the scheme. Based on early estimates, this means around 2.4 million more employees are potentially eligible for the CJRS.

The off-payroll working (IR35) rules can apply if an individual provides their services through their own limited company. It is worth noting that these rules do not prevent anyone from continuing to work through a limited company or require individuals to move onto payroll. They simply ensure that those working like an employee through a limited company pay broadly the same tax and NICs as if they were employed directly.

The Government is aware that some organisations have chosen to offer contractors employee positions on payroll but does not believe that a change to the rules is required to account for individuals in this position. The rules on calculating entitlement to CJRS were set to be consistent for all employees, and to move away from this would complicate the scheme and increase the burden on employers. As set out above, the government has already moved the cut-off date to 2 March 2021 which should cover any employees who have been brought on payroll over the last few months, as long as they meet the other scheme criteria.

Yours sincerely

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