

Written evidence submitted by the Low Incomes Tax Reform Group (LITRG)

1 Response

- 1.1 We welcome this opportunity to provide a short response to the Committee's latest inquiry into the economic impact of coronavirus. LITRG aims to give a voice to low income, unrepresented taxpayers in the tax system and it is from this perspective that we are responding. We have limited our response to those areas that fall within our areas of expertise and experience, much of which is gained from the website queries and comments we receive from members of the public.
- 1.2 When we responded to the Committee's earlier call for evidence, we acknowledged the unprecedented situation caused by the pandemic and the significant challenge it has created for government. We also reflected on the speed at which HMRC and Treasury officials have been required to design and deliver the various schemes and the hard work of their teams in delivering the schemes. Our comments should still be read against this background, although several more months have gone by since the original schemes were introduced and some of the issues we identified previously have not yet been addressed.
- 1.3 The speed at which the various schemes were implemented required government and HMRC to make important decisions quickly without wide consultation. As a result, the schemes had some rough edges – both in terms of who qualifies but also in the way they interact with each other and other existing government support. Although this was understandable at the outset of the crisis, as more time has elapsed it is disappointing that some of those design choices have not been revisited to ensure support is targeted to those who need it. Some people remain excluded from the two main support schemes (Self-Employment Income Support Scheme (SEISS) and Coronavirus Job Retention Scheme (CJRS)) including:
- Those who began self-employment in the 2019/20 tax year
 - Those whose profits were affected by periods of illness or parental leave
 - Those who made errors in completing their tax returns – for example, construction industry scheme (CIS) workers who mistakenly declared their income as employment rather than self-employment income
- 1.4 HMRC did make some small adjustments to the SEISS scheme in respect of new parents and military reservists. These amendments, whilst welcome in terms of giving support to people previously excluded, were narrow and made rules which were already complicated, even more complex. We understand they were of benefit to only a very small number of people, raising questions over whether the complexity was justified.
- 1.5 We are particularly concerned at the complexity of the two schemes and the shortcomings in the guidance provided to users, and what this may mean in the future in terms of compliance checks. In our previous submission, we raised serious concerns about the number of changes to the CJRS guidance, the difficulty in obtaining answers to critical

questions (to allow employers to decide whether to furlough people or not) and the lack of clarity around the scope of the scheme. These concerns have unfortunately remained as the CJRS scheme has been extended. We are concerned for those employers who, despite their best efforts, may have claimed incorrectly without clear guidance and reassurance from HMRC on some key issues.

- 1.6 Similarly, on the SEISS scheme, we are concerned at the lack of guidance around the third SEISS grant which requires there to be a 'significant reduction' in trading profits. There is no clear definition of what 'significant' means, with HMRC guidance¹ suggesting that it will depend on individual and wider business circumstances. This makes it very difficult for self-employed individuals to know with any certainty whether they can claim, with the risk of severe penalties if HMRC (or the courts) later take a different view from the taxpayer. In view of the pandemic and the stress that many small business owners are already under, we think it was a mistake to choose a test like this without offering a clear definition of the term which would have given the required certainty to individuals.
- 1.7 It is crucial that HMRC take all of this into account when they begin the process of compliance checking claims and when setting out the conditions for the SEISS 4 (second extension) grant.

CIS workers

- 1.8 We would like to draw the Committee's attention to one specific problem we have identified. Most of the groups listed above, who have been excluded from the two main support schemes, were excluded as a result of conscious decisions around policy design. For example, it was a policy decision to only allow access to the SEISS scheme for those who were self-employed before 6 April 2019.
- 1.9 However, the final group in our list at para 1.3 above is different because it includes self-employed CIS workers who were intended to benefit from the SEISS scheme. The reason some did not qualify for support is because there was an underlying error on their tax return – namely that they reported their CIS income on the employment pages of their tax return rather than the self-employment pages. As there was no declared self-employment in the relevant years, they do not qualify for the SEISS scheme. The CJRS is also not in point, as they are not actually in employment. So, barring Universal Credit (or any existing tax credit claim/other benefit claim), they have no entitlement to support.
- 1.10 To reduce the possibility of fraudulent claims for SEISS, no amendments to tax returns could be made after 26 March 2020. In the CIS worker cases we have heard of, HMRC have refused to use their discretion to allow the claims for the SEISS grant. In addition, we are concerned that (as far as we can ascertain) HMRC have not taken any steps to support the CIS workers concerned – both in terms of rectifying their historical position and also ensuring their

¹ <https://www.gov.uk/guidance/claim-a-grant-through-the-coronavirus-covid-19-self-employment-income-support-scheme> - see Who can claim

returns going forward are filed correctly. There may be National Insurance contributions (NIC) issues to deal with as well as tax issues.

- 1.11 We believe that HMRC should use their discretion to allow such claims because in our view HMRC have a responsibility to help taxpayers get things right. Indeed, the HMRC Charter says ‘We’ll help you meet your tax responsibilities’.¹ In these cases, the CIS worker may have been confused by the information they received in relation to their CIS income and tax deducted at source. For example, the statement of pay and deductions that engagers of CIS workers must use refers to an ‘employer’s reference’ which suggests that the individual is therefore an employee².
- 1.12 In addition, we think HMRC should have been aware there was an issue in these cases. This is because the tax and NIC records of affected CIS workers will have shown a number of mismatches. In particular, engagers of CIS workers send in CIS returns to HMRC, but no trading profits were declared on the workers’ Self Assessment returns; no RTI information was reported to HMRC by any employer and no Class 1 NIC was paid, yet the taxpayer reported employment income on their tax return. At the very least, we think this should have triggered systems to flag an issue and for HMRC to enquire into the return or correct it unilaterally.
- 1.13 Now that this issue has come to light, we think HMRC need to set out how they propose to deal with the consequences arising from the historic misclassification of this income. It is possible that this issue affects more CIS workers than those who tried to apply for SEISS grants. In addition, we think there are some immediate steps that could be taken by HMRC to try to prevent the issue going forward including:
- Undertake a one-off exercise to cross-check whether registered CIS subcontractors are reporting at least some self-employment income on their tax return. For those who aren’t, a ‘nudge’ letter would be appropriate to prompt them to review whether or not they are reporting their income correctly.
 - Review the information provided to newly-registered CIS subcontractors to put it beyond doubt that the income earned under CIS is self-employment income and not employment income, and provide guidance on how to report such income on a Self Assessment tax return. This should include amending the Pay and Deduction statement which refers to ‘employer’s tax reference’.
 - Review how a specific check could be implemented which triggers either a unilateral correction under s9ZB Taxes Management Act 1970, or an enquiry under s9A of that Act, when a registered CIS subcontractor submits a Self Assessment tax return in specific circumstances.

Test and trace payments

¹ <https://www.gov.uk/government/publications/hmrc-charter/the-hmrc-charter>

² <https://www.gov.uk/government/publications/construction-industry-scheme-payment-and-deduction-certificate>

- 1.14 Another example we would like to draw to the Committee's attention is how difficult it has been for people to understand how all of the government support schemes interact and what support is most appropriate in their circumstances. This is especially difficult when each different devolved area of the UK has slightly different support, with different names, available.
- 1.15 As the pandemic continues, other gaps are coming to light. For example, children who are told to self-isolate due to a classmate or teaching staff testing positive for coronavirus are sent home for their self-isolation period but their parents/carers are not able to access the test and trace £500 payment because they are not required to actually self-isolate themselves. However, the parents/carers are left with a childcare problem and although they could ask to be furloughed under the Job Retention Scheme (which can be used when someone can't work due to their caring responsibilities), we have heard from parents whose employers (including public sector employers) have said they must either take unpaid leave or annual leave instead (public sector employers are 'expected' not to use the furlough scheme and in any case, there is no obligation on employers to furlough workers.) Wales and Scotland have now made it possible for the £500 payment to be claimed in this situation.

Website query:

My son was requested by his school to self-isolate for 14 days as he came into close contact with a staff member who was tested positive and a pupil who also tested positive. I am on universal credit currently working 28 hours a week. After speaking to his school and asking them if they had been given a Test and trace number I could use to claim the test and trace payment, it seems they are not given one, I spoke to the DoFE who also couldn't give me a number or help me find a helpline for more information. After finally speaking to my council I applied without the number which I was advised to do. I have since received an email stating that I am not entitled to this payment, it seems that the system does not cover working single mums or dads, who can't work from home and who have to take time off as unpaid parental leave to look after isolated children. Even if I could request childcare who would take a child who could possibly infect others! I am also not entitled to the discretionary payment or flexi furlough as it is a publicly funded setting. I will receive some help at the end of Jan when my UC catches up with my December paycheck but I have still lost 2 weeks wages. I don't understand why a system put in place to help people on lower incomes in this difficult time, isolates one of the many groups of people that need it most.

- 1.16 A balance clearly needs to be struck between the need for localised support as against a national policy. However, it is imperative that Government ensure they are looking across all of the potential payments and that they fully understand where any gaps may exist, and work with the devolved governments to try to ensure cohesion as far as possible.
- 1.17 One other issue that we have identified is around the tax, NIC and benefit status of the various support payments. We are concerned that problems are being stored up for the future. Firstly, using the term 'grant' implies it is something that need not be repaid, and we think most people will assume the income is not taxable. That is the case for some grants, but the majority of COVID-related payments are taxable and some may be subject to NIC.

- 1.18 We are concerned that this has not been made clear enough to people, especially for those who will need to declare the payments on their 2020/21 tax returns – over a year away.
- 1.19 In addition, continuing with the example of the £500 test and trace payment, it has taken us a couple of months to try and find out exactly how HMRC plan to collect the tax on these payments made to employees. They were announced as taxable¹, but as yet no information has been published about how that tax will be collected. Our understanding is that HMRC have been receiving data about the payments from Local Authorities and will amend employees' tax codes to collect the tax. We think this is likely to come as a surprise to many employees and this is crucial information that should have been shared clearly when the payments were made. Similarly, we understand self-employed recipients will be expected to declare them on their tax returns for 2020/21.
- 1.20 Again, HMRC must do more in terms of guidance for recipients of these payments. At the very least, there should be a page on GOV.UK which identifies all of the coronavirus related payments (including in each of the devolved nations) that allows people to find out the tax, NIC and benefit status of each of those payments. We urge HMRC to work with other Government departments to produce such a tool and to take a reasonable approach to any compliance activity.

2 About Us

- 2.1 The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998, LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low-income workers, pensioners, migrants, students, disabled people and carers.
- 2.2 LITRG works extensively with HM Revenue & Customs (HMRC) and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.
- 2.3 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

¹ Although the payments are taxable, not everyone will pay tax on the payments if they fall within their personal allowance. In addition, UC is based on net income (after deductions of tax, national insurance and certain pension contributions). If more tax is paid, net income will reduce and therefore, depending on individual circumstances, UC may increase to offset some of the tax collected. Although UC legislation does not specifically envisage this happening – because it only allows a deduction for tax paid in relation to the specific employment or self-employment, our understanding is that in practice it happens because DWP are reliant on RTI data from HMRC about tax paid and it is impossible to determine how much tax is paid on different types of income.

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