



DRAFT LEGISLATION: TAXATION OF CORONAVIRUS (COVID-19) SUPPORT PAYMENTS

Issued 12 June 2020

ICAEW welcomes the opportunity to comment on the draft legislation on the taxation of coronavirus (COVID-19) support payments published by HM Revenue & Customs on 29 May 2020, a copy of which is available from this [link](#).

The draft legislation:

- Makes provision for the taxability of coronavirus support payments;
- Gives HMRC powers to recover payments to which the recipient is not entitled; and
- Gives HMRC powers to charge a penalty in cases of non-compliance

The operation of the schemes is legislated for in the relevant directions but these aspects need to be in primary legislation.

In general, we consider that the legislation provides the appropriate powers to HMRC but we do have some concerns about the short period which taxpayers have to notify HMRC if they are not entitled to a support payment and the power to charge penalties appears to go further than the expressed intention of HMRC.

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KEY POINTS

1. Paragraph 1(2) of the Schedule ensures that coronavirus support payments are taxed under the applicable provisions of the Income Tax Acts or the Corporation Tax Acts and paragraph 7 allows the Treasury to make regulations to modify the application of any provision of the Tax Acts accordingly. HMRC has indicated that its intention is:
 - a. That all Self-employment Income Support grants should be taxable in 2020/21
 - b. That Coronavirus Job Retention Scheme grants paid to employers who are not in business in respect of furloughed domestic staff (e.g. nannies) and similar workers should not be taxable
 - c. That where grants are subject to income tax they will also be subject to national insurance contributions.
2. We suggest that these points be made explicit in the legislation, including, for the avoidance of doubt, the class(es) of NIC to be applied to the respective grants.
3. It is not clear whether the income tax charges will be subject to Scottish or Welsh rates of tax or the UK rates apply.
4. It is not clear whether payments on account for the following tax year (under s59A TMA) are increased because of the income tax arising as a result of this Schedule? We suggest that this point be addressed in the legislation.
5. The notification of liability in paragraph 12 of the Schedule requires that the taxpayer notifies HMRC of liability under paragraph 8 by the later of 30 days of the Act being passed or 30 days after the day on which the income tax became chargeable, whichever is the later. Given the complexity of the schemes and the likelihood of inadvertent errors we suggest that a notification period of 90 days should be allowed, as it may take some time for taxpayers to become aware that they are not entitled to the grant. We note that the mechanism for notifying liability has yet to be established.
6. HMRC has indicated that the primary focus of its compliance activity will be to recover overpayments of grants and that penalties will only be levied in case of deliberate non-compliance. We think that the legislation goes further than this and HMRC may be obligated by law to charge penalties in case where there has not been deliberate non-compliance.
7. We are concerned that HMRC is being given powers to charge harsh penalties which it may be obliged to use, with little discretion.

Paragraph 16 Sch 41 FA 2008: HMRC 'shall' charge any penalties that become due.

Paragraph 1 Sch 41 FA 2008: A penalty is payable where someone fails to comply with an obligation to notify, including one under s7 TMA (the provision invoked by paragraph 12 of this draft Schedule).

While paragraph 13 enables HMRC to deem one type of behaviour as triggering a deliberate and concealed failure to notify penalty under Sch 41 FA 2008, this does not mean that HMRC can sidestep charging Sch 41 FA 2008 penalties in other situations. While HMRC does have discretion under its care and management powers, para 13(4) of the draft Schedule, does in particular, suggest that HMRC does intend to charge Sch 41 penalties. This would mean that HMRC is obligated by law to charge failure to notify penalties for all failures to notify under Para 12, unless the person has a reasonable excuse for the failure. Similarly HMRC must penalise (under Sch 24 FA 2007) anyone who puts an incorrect figure on their tax return in relation to liabilities under para 1 or para 8 without taking reasonable care.