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## Employment – 20:20 vision

Providing clarity and insight on employment law matters

## Furlough fraud: New guidance on 90 day window for reporting errors to HMRC



During July 2020 we saw the first arrest for “furlough fraud” for an alleged amount of £495,000 as well as a steep rise in the number of “furlough fraud” cases reported to HMRC. In this context, it is crucial for employers to be aware of the 90-day window to notify HMRC of any errors under the Coronavirus Job Retention Scheme (“CJRS”).

This 90-day period is set out in the Finance Act 2020, which received Royal Assent at the end of July and is a lengthier amnesty window than the 30 day period which had been anticipated. HMRC have issued guidance on the new time limits and the consequences of failure to comply, which we set out below.

### What are the time limits?

HMRC guidance provides that if an employer has overclaimed a CJRS grant and has not repaid it, they should notify HMRC by the latest of whichever date applies below:

- Ninety (90) days after the employer receives the CJRS grant to which it is not entitled; or
- Ninety (90) days after the day circumstances changed so that the employer was no longer entitled to keep the CJRS grant; or
- the 20<sup>th</sup> October 2020.

For more information on the time limits set by HMRC please click [here](#).

### What happens once HMRC has been notified?

HMRC may recover the full amount of an overpaid grant by making a tax assessment for the amount to which the employer was not entitled and has not repaid. This includes any amounts that it has not used to pay furloughed employee wages and associated costs within a reasonable period.

Payment of the amount assessed is due 30 days after the assessment, with interest charged on late payments. HMRC may also charge late payment penalties if the amount remains unpaid 31 days after the due date.

If HMRC have not made an assessment, the employer must include the relevant details of the overpaid CJRS grant, on the appropriate corporation tax return (or 2020/2021 Self-Assessment tax return).

### What happens if an employer fails to notify HMRC about the overpayment?

HMRC may charge an employer a penalty if it does not notify HMRC within the notification period that the employer is chargeable to income tax on an overclaimed CJRS grant.

### How much would the penalty be for a failure to notify?

When deciding the amount of any penalty, HMRC will take account of what the employer knew and when.

If:

- a) the employer knew it was not entitled to the grant when it was received; or
- b) knew that it had stopped being entitled to the grant because of a change of circumstances,

and didn't tell HMRC in the notification period, then the law treats the employer's failure as deliberate and concealed.

This means a penalty of up to 100% could be charged on the amount of the CJRS grant that the employer was not entitled to receive or keep and which it had not repaid by the last day of the notification period.

There is also the possibility of criminal prosecutions and corporate criminal offences.

### Are there any provisions specific to partnerships?

In short, yes.

If a partnership receives an overclaimed CJRS grant, which is not repaid, HMRC may assess:

- the relevant partner; or
- any of the partners

to collect the amount due as income tax.

The partners will be jointly and severally liable for the amount assessed.

If the amount is not repaid and HMRC have not issued an assessment, one of the partners must include the Income Tax charge in their 2020/ 2021 Self-Assessment tax return. The other partners will not be required to self-assess the amount.

HMRC may assess the relevant partner for the penalty chargeable, but all partners are jointly and severally liable for any penalty assessed.

### Next steps

Employers should take steps now to ensure they are prepared should they be reported to HMRC by a disgruntled employee or otherwise become subject to HMRC interest.

Such steps include:

- **Review records** – ensuring detailed decisions are documented. For example, why the decision was made that the employer was entitled to benefit under the CJRS and if circumstances changed what steps were taken? How was the rebate calculated before it was submitted to HMRC? Have any allegations been made by disgruntled employees that they were asked to work while on furlough? If so, have these been adequately investigated and the issues corrected?
- **Policies** - review and update whistleblowing and grievance procedures to be ready to deal with employees who try to claim the company abused the CJRS.
- **Reputational risk** – assess the financial position of the company and its use of the CJRS, considering whether voluntarily repaying money to HMRC would be a sensible way forward.
- **Be proactive** - so you are ready to respond, if required.

Please do get in touch if you have any queries or require assistance on any of the topics covered in this alert. We have a dedicated team of employment lawyers keeping up to date on the latest Covid-19 related developments and who are available to answer any questions you may have.

### Contact us



#### Paul Reeves

Head of employment, partner  
T: 020 7809 2916  
E: [paul.reeves@shlegal.com](mailto:paul.reeves@shlegal.com)



#### David Baxter

Of Counsel  
T: 020 7809 2535  
E: [david.baxter@shlegal.com](mailto:david.baxter@shlegal.com)



#### Leanne Raven

Professional support lawyer  
T: 020 7809 2560  
E: [leanne.raven@shlegal.com](mailto:leanne.raven@shlegal.com)