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SEPTEMBER 2020

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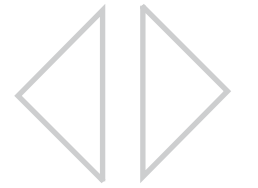
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COVID-19: IMPLICATIONS FOR R&D CLAIMS

For accounting periods ending after 28 February 2020, SMEs relying on cash tax credits need to check they are still eligible, and whether the amount they have accrued could be less than expected. There are also potential pitfalls for large companies to consider.

After fighting to stay solvent with COVID-19 funding and furlough payments, companies undertaking R&D activities now need to review the impact of having accepted government help.

Bounce Back Loans (BBL), the Coronavirus Business Interruption Loan Scheme (CBILS) and the Coronavirus Large Business Interruption Loan Scheme (CLBILS) are all considered “notified State Aid”, which means that if they have been claimed by an SME, an R&D claim could be blocked. It will be essential to check whether any of this funding has been used in the company’s R&D activities, or whether it was used to prop up other areas of the business.

Thankfully HMRC has acknowledged that in many cases, government loan support will not trace directly to R&D activity, and so SME R&D relief may not be impacted. However, you should be prepared to prove this, even if any loan application did not specifically refer to an R&D purpose.

If you are, however, in the situation that loan support was directly obtained to continue your R&D function, all is not lost, as any SMEs no longer eligible to make a claim under the generous SME R&D scheme can instead make a claim for the R&D Expenditure Credit (RDEC). Sadly, the reason why this is possible is because the RDEC is not considered generous enough to count as notified State Aid. For loss-making SMEs, claiming the RDEC will feel even less generous, as they will need to wait until they turn a profit to benefit from the reduction of that future corporation tax liability.

Staff costs and responsibilities

Companies of all sizes will need to review their staff costs for the period 1 March to 31 October 2020 and identify any changes to staff responsibilities. Any employees who typically carry out R&D activities full-time may have been redeployed to cover for redundant or furloughed colleagues and/or they might have been furloughed themselves under the Coronavirus Job Retention Scheme (CJRS).

Payments made to employees to whom a CJRS claims relates will not be eligible to be brought into any R&D claim over that period, as furlough means that the individual(s) could not have been conducting R&D at that time. Companies will need to establish who was furloughed, for how long, and if they came back part-time under flexible furlough. As always, detailed timesheet records are preferable as they provide excellent supporting evidence for relevant staff costs. However, if these are unavailable, it would certainly be a good idea for the Competent Professionals (often the Chief Technology Officers in tech businesses) to start keeping a record of modified working patterns, and their updated best estimates of how much time to attribute to each employee’s time spent on R&D projects.

Going concern

A final potential Covid-related trap is whether companies are still considered a going concern in light of all the uncertainty; this may require early discussions with the auditors. Not only should the accounts sent with the tax return support a going concern position, a company making an R&D claim must still be a going concern at the time of making the claim. As always, do remember that if a company is reliant on an R&D tax credit to stay afloat, it will never be considered a going concern.

After all these warnings, there does remain one silver lining...

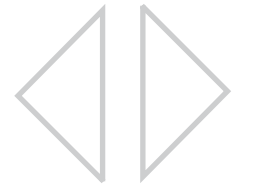
The proposed PAYE cap that was due to restrict the amount of payable credit in any year to three times’ the company’s total payroll liability has been pushed back to at least 1 April 2021. Whilst eligible staff costs for periods after 28 February 2020 may have gone down due to the impact of coronavirus, for some companies (especially those outsourcing labour), the lack of an immediate cap may actually make them better off for 2020.

Do not wait until the tax return and R&D claim are being prepared to assess whether your company is impacted by any of these issues – you should act now.



If you have any questions, please get in touch with your PKF Littlejohn contact.

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VAT UPDATE: TERMINATION PAYMENTS



Following a recent judgement by the Court of Justice of the EU (CJEU), HMRC has reviewed its policy on termination payments. This could bring payments that allow customers to withdraw or terminate agreements within the scope of VAT.

Effect of change in policy

HMRC's policy change was announced on 2 September 2020 with immediate effect. For businesses that have not accounted for VAT on termination payment, they have a potential exposure for the previous four years. Only those taxpayers who have received a specific ruling from HMRC, confirming that their income falls outside the scope of VAT, are likely to be protected from HMRC's reconsideration of their historic position.

CJEU rulings

VAT is due on a supply of goods or services for a consideration. VAT is therefore applied to most supplies made by VAT registered businesses for consideration. A supply of services includes anything which is done for a consideration.

The judgements from the CJEU in MEO (C-295/17) and Vodafone Portugal (C-43/19) helped clarify the position in relation to payments for early termination of telecoms contracts. The court decided that payments, set out in the agreements, made by customers to terminate their contracts early, were part of the agreement to provide services. So, payments due by customers were part of the consideration for supplies made and were taxable consideration.

Impact

Genuine compensation to recompense for a loss, where the payment is non-contractual and so not linked to an agreement to make any supply, may still fall outside the scope of VAT. However, if a payment is labelled as compensation, that may not be the case. The key is whether it is linked to any supply. Given the broad meaning of a 'supply' this can, for example, extend to provide the right to early termination of a contract or for giving or surrendering a right to something.

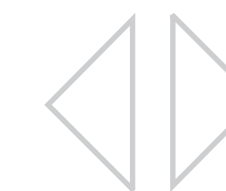
Businesses affected by this change of policy should review the treatment of such receipts or payments over the past four years and consider if they were correct to treat such payments as outside the scope of VAT, or if they now have an exposure to output VAT. In the payer's case, they should consider if they were correct to deduct input VAT on a supply which VAT has been wrongly charged. The terms of any agreement under which payment was made will also need to be considered, to determine whether a payment should be treated as inclusive or exclusive of VAT.

If your business has received or made compensatory payments in the last four years, such as in the event of contract termination, liquidated damages, breaches of contract or pursuant to lease agreements, then it may be advisable to seek professional advice on the VAT treatment of these. You should establish what action to take to correct any errors which may have been made.

If you are in any doubt on the impact of the policy change to your business, please get in contact with your usual PKF contact or a member of PKF's VAT team.

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LARGE BUSINESSES TO REPORT UNCERTAIN TAX TREATMENT

From April 2021, large businesses are expected to be required to notify HMRC where they have adopted an uncertain tax treatment.

The extended consultation window has recently closed on the government's intention to require large businesses to notify HMRC where they have adopted an uncertain tax treatment. It is currently proposed that this will be legislated in Finance Bill 2020-21 and will apply to uncertain tax treatments in returns filed after April 2021.

Which businesses will be required to notify?

The requirement will only apply to those large businesses which fall within the Senior Accounting Officer and Publication of Tax Strategies regimes. Under current legislation this means businesses with either a turnover above £200 million or a balance sheet total over £2 billion.

HMRC has also indicated that the notification measure will apply to partnerships and LLP's that exceed the above thresholds, as well as corporates.

The new rules will apply to all taxes that currently fall within the SAO regime – Corporation Tax, Income Tax, PAYE, VAT, Excise and Customs Duties, Insurance Premium Tax, Stamp Duty Land Tax, Stamp Duty Reserve Tax, Bank Levy and Petroleum Revenue Tax.

Meaning of uncertain tax treatment

An uncertain tax treatment is one where a business believes that HMRC may not agree with its interpretation of the legislation, case law or guidance in.

The objective of the new rules is to identify issues where businesses have adopted a different legal interpretation to HMRC's view.

The notification requirement draws on the IFRS Interpretations Committee's IFRIC 23 – Uncertainty over Income Tax Treatments, which helps to determine a notification requirement. This requires assessing whether it is probable that a tax authority (including a court) would accept an uncertain tax treatment and looks at the ultimate outcome, and not solely the likelihood of challenge by HMRC. The proposed measures differ in this respect as they require an assessment, not of the ultimate outcome, but also to identify and notify uncertainties that HMRC is likely to challenge.

IFRIC 23 only applies to income taxes, however HMRC intends to use a similar definition to apply to all the taxes in scope of these proposed rules.

Notification process

Notification will be via a single annual process which encompasses all relevant taxes. The essential information to be included will be similar to that which is currently included within the SAO regime, namely a concise description of issues identified, but will also require an indication of the amount of tax relating to the uncertainty.

There is a threshold of £1m, whereby uncertain tax treatments amounting to less than £1m either individually or combined, will not be notifiable.

Current timing for the certification made under the SAO regime is six or nine months from the end of the accounting period of the company, and the intention is to align the notification with these same annual accounts submission deadlines.

Exceptions

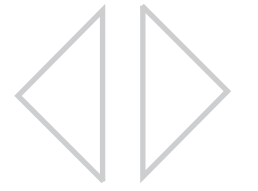
The government has included proposed exceptions, including situations in which disclosure is made under another regime, for example DOTAS or DAC 6. It will also not be necessary to disclose an uncertainty which is already the subject of formal discussion with HMRC, such as in the course of an ongoing enquiry into a tax return which specifically covers the tax treatment in question.

In addition, the requirement to disclose can be removed where a business has written confirmation from HMRC that it has sufficient information in advance of the deadline for disclosing an uncertain tax position. Where a business has a Customer Compliance Manager (CCM), they are likely to be the person with whom such an agreement is made. However, HMRC will release details of persons to contact for customers without a CCM.

If you have any questions, please get in touch with your PKF Littlejohn contact.

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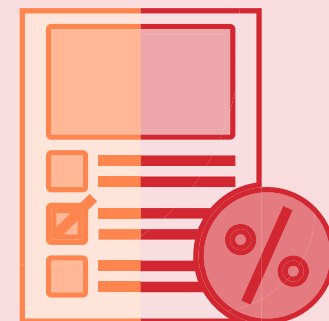
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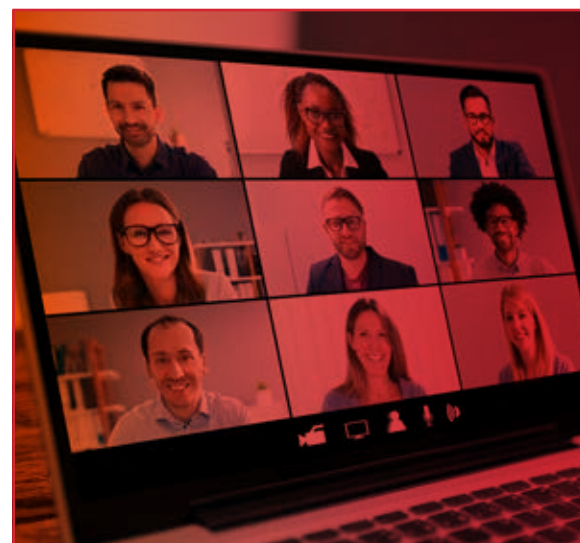
ABOUT PKF



PKF Littlejohn is a fast-growing firm of accountants and business advisers based in London's Canary Wharf.



We provide a full range of audit, accountancy, tax and advisory services, and are experts at simplifying complexity - we're particularly well-known for working with complex clients with challenging issues in fast-moving and highly technical areas.



Our aim is to understand people, the organisations they run, and what matters to them, so we can simplify complexity and help them achieve their ambitions.



We have **three important principles** that make a big difference in our business, and they also have a significant impact on our clients' organisations. **They are really simple:**

1 People matter; making a difference for the people we work with and the people we work for is our priority

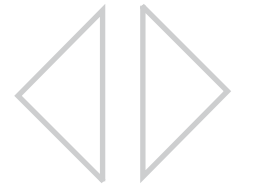
2 We're relentlessly curious, because we want to know each client's organisation as well as they do, even better if we can

3 And we're good at getting things done.



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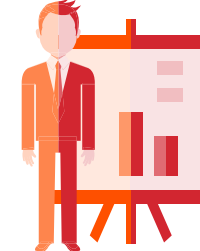
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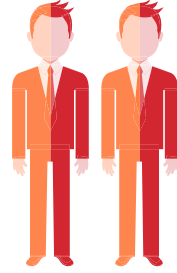
Customs duty
Assistance with trading across national boundaries in Europe




Global Mobility
Our Global Mobility team, together with the global network of PKF International, supports expatriate and internationally mobile individuals in over 150 countries




HMRC enquiries
Not only will we help you minimise the risk of an enquiry by HM Revenue & Customs, but should one be raised you can rely on our wealth of experience in resolving disputes and negotiating favourable settlements



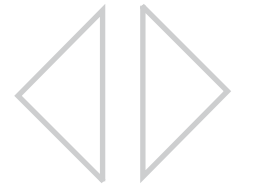
Employee incentives
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Tax planning
In our view, paying the right amount of tax means paying the minimum the law requires of you. We will help you achieve this with tailored strategies that suit your personal and business circumstances



Estate planning and trusts
We can provide sound advice on how to make the best possible use of tax-saving vehicles, ensuring that your family is properly provided for



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