Published on *The National Law Review* https://natlawreview.com

UK Self-Employment Income Support Scheme Details Announced; UK Job Retention Scheme Cut-Off Date Moved

Article By:

Paul McGrath

HM Revenue & Customs (HMRC) recently published guidance for self-employed individuals who wish to claim a UK Government grant under the Coronavirus Self-Employment Income Support Scheme (SEISS). HMRC also moved the cut-off date under the Coronavirus Job Retention Scheme (CJRS) from 28 February to 19 March 2020.

This article discusses key elements of the SEISS guidance that will be relevant for individuals who operate owner-managed businesses in the United Kingdom, whether as a sole trader or in partnership. If your business is run through a partnership and you are concerned that you or someone else may in fact be an employee of that partnership, you or that person may instead qualify for furlough treatment and related UK Government funding under the CJRS. Details of the CJRS can be accessed here, and it is discussed further in the following McDermott UK Employment Alerts: UK Coronavirus Job Retention Scheme Details Announced and UK Coronavirus Job Retention Scheme: Significant Developments.

How these schemes apply may vary by individual circumstances. Businesses should consider seeking specific legal advice.

IN DEPTH

Coronavirus Job Retention Scheme: Cut-Off Date Moved to 19 March 2020

In response to political pressure and lobbying, HMRC agreed to allow UK employers to claim under the CJRS for all UK employees that were on the payroll on or prior to 19 March 2020 (as opposed to 28 February 2020), provided that the PAYE payroll system was in place on or before that date. Employees notified to HMRC on an RTI submission on or before 19 March 2020 who subsequently were made redundant or ceased working for the employer prior to 19 March 2020 may also qualify for furlough treatment, provided their employer re-employs them and puts them on furlough.

Coronavirus Self-Employment Income Support Scheme

What is the SEISS and how does it work?

Our previous update (COVID-19 Update: UK Government Provides Further Tax and Financial Support for Businesses) includes an overview of how the SEISS works and whom it is expected to benefit. The purpose of this article is to help self-employed individuals ascertain their eligibility for the SEISS, as well as inform them how HMRC will calculate an SEISS grant.

The scheme is not yet in operation. However, HMRC aims to contact affected individuals by mid-May 2020, when the scheme becomes available, with a view to making payments by early June. The scheme will be available for three months, but may be extended. If you think that you are eligible for an SEISS grant but have not been contacted by HMRC by mid-May, please get in touch with one of the named McDermott attorneys below.

How is the grant calculated?

Grants will be based on the average trading profits over the last three tax years (2016/17, 2017/18, 2018/19), unless the individual in question received loans subject to the UK loan charge rules during 2016/17 and/or 2017/18. In those circumstances, the grant will be based on either the average trading profits for 2016/17 and 2017/18, or just the trading profits for 2017/18.

If no self-assessment (SA) tax return has been submitted for 2016/17 and 2017/18, or a return has been submitted for 2016/17 but not for 2017/18, the grant will be based on trading profits for 2018/19 only. If no SA tax return has been submitted for 2016/17 only, the grant will be based on the average trading profits over the last two tax years (2017/18, 2018/19). These trading profits, or average trading profits, will then be divided by 12 to give a monthly amount. If this amount exceeds £2,500 then the monthly amount is limited to £2,500.

The grants themselves are taxable, and will need to be declared on self-assessment tax returns by 31 January 2022.

Who is eligible to claim under the SEISS?

All self-employed individuals who have lost trading profits because of COVID-19 disruption, whether as sole traders or members of a partnership, may claim under the SEISS, provided that their trading profits for the UK tax year 2018/19 comprise more than 50% of their total income for that tax year, or their average trading profits for the past three UK tax years (2016/17, 2017/18 and 2018/19) comprise more than 50% of their average total income over those tax years, and are less than £50,000 in either case. “Total income” for this purpose includes employment earnings, interest, dividends, property income, pension income and other income not falling within any of those categories (known as “miscellaneous” income).

In calculating trading profits for eligibility purposes, HMRC will use the turnover figures provided on the relevant tax returns and deduct any allowable business expenses and capital expenditure. If the individual made a trading loss for one or more of those tax years, those losses will be factored into the averaging calculation. “Allowable business expenses” for these purposes include the £1,000 trading allowance and capital allowances (*i.e.*, tax depreciation allowances), but do not include losses brought forward from prior periods, or the personal allowance.

“Allowable business expenses” also include office costs (*e.g.*, stationery, phone bills), travel costs (*e.g.*, fuel, parking, train or bus fares), clothing expenses (*e.g.*, uniforms), staff costs (*e.g.*, salaries, subcontractor pay), stock/raw materials, financial costs (*e.g.*, insurance, bank charges), business premises costs (*e.g.*, heating, lighting, business rates), finance costs (*e.g.*, insurance, bank charges), advertising and marketing costs, and the costs of training courses related to the business. One would normally expect these specific items to be deductible from trading profits in any event, as ordinarily they would be considered as expenses wholly and exclusively incurred for the purposes of the trade, so it is not entirely clear why HMRC felt the need to spell this out in the guidance.

To claim under the SEISS, individuals must also have submitted their self-assessment (SA) tax return for the UK tax year 2018/19, have traded in the tax year 2019/20, be currently trading (or would have been currently trading but for COVID-19 disruption), and intend to continue trading during the tax year 2020/21. They also must confirm to HMRC that their business has been adversely affected by COVID-19. Those who have not yet submitted their tax return for the UK tax year 2018/19 *must have done so by 23 April* 2020 in order to be able to claim under the SEISS. Tax return amendments submitted after 26 March will not be taken into account for this purpose.

Contractors with personal services companies (PSCs) do not appear to be covered by the SEISS, even if they are "outside IR35". These contractors, in their capacity as directors of the PSC, should be able to claim under the CJRS in respect of the PAYE salary element of their earnings. However, dividends they receive from their PSC do not appear to be covered by either the CJRS or the SEISS. It would make logical sense for those "outside IR35" to be eligible for the SEISS with respect to dividends as well as salary, and those "inside IR35" to be eligible for the CJRS with respect to deemed employment income, since there is no particular policy reason why individuals in these circumstances should be excluded from Government-funded liquidity schemes. Various members of the UK tax profession are seeking clarification from HMRC on these issues, in the hope that a solution will be reached soon.

It is not clear how the SEISS would apply to non-resident individuals running a UK business, if at all. Technically, the SEISS should also apply to non-UK resident individuals carrying on a business in the United Kingdom which has been disrupted because of COVID-19 restrictions. However, the guidance does not expressly mention how these circumstances will affect the calculations to be used in determining eligibility for, and for grants made pursuant to, the scheme. In principle, one would expect such calculations to take into account UK source income only. We hope that HMRC will provide further clarification on these points in due course.

How does the SEISS interact with the loan charge?

Where self-employed individuals have received payments for services in the form of a loan or other form of credit subject to the UK loan charge rules, they may also claim under the SEISS, provided they file their 2018/19 return by 30 September 2020. The eligibility calculation for such individuals does not take into account the UK tax year 2018/19, only the tax years 2016/17 and 2017/18. (If the individual was not self-employed during the UK tax year 2016/17, the trading profits for eligibility purposes are based on the tax year 2017/18 only). This takes account of the fact that HMRC may not yet have 2018/19 tax return data for such individuals, since HMRC has given such taxpayers the option to file their 2018/19 self-assessment tax return by 30 September 2020 if they need more time to consider how the recent changes to the UK loan charge rules affect their tax affairs.

Provided such individuals file an accurate SA tax return and pay the tax or agree a Time To Pay arrangement before 30 September 2020, HMRC will waive any late filing or late payment penalties. Auto-generated messages from HMRC regarding penalties can be removed by contacting the loan charge helpline on +44 (0)3000 599110.

National Law Review, Volume X, Number 119