



Furlough Claims – Don't Fall Foul!

Readers will be well aware that the furlough scheme (also known as the Coronavirus Job Retention Scheme – “CJRS”) began in March 2020. CJRS is now nearing its end, with the Job Support Scheme replacing it from 1 November 2020. See our [alert here](#) for further details.

There is no doubt that the CJRS offered much needed help to businesses and employees when they needed it. However, it is recognised that the deployment of the grant scheme was rushed and many businesses may not have fully understood the rules before making claims for furlough grants. Furthermore, the furlough legislation evolved through April to October and many businesses may not have kept up to speed with the changing rules.

Based on HMRC estimates, up to £3.5 billion in CJRS payments may have been claimed fraudulently or paid out in error to UK businesses. Consequently, HMRC is now setting about investigating businesses to ensure that their furlough claims were appropriate. To date nearly 30,000 investigation letters have been sent to businesses by HMRC (with around an additional 3,000 of these “nudge” letters being issued each week). HMRC has also set up an anonymous whistleblowing hotline for employees and third parties to notify HMRC if they believe employers did not follow the requirements of the furlough rules (most notably that for the period up to the end of June 2020 the employees were not permitted to carry out any work at all for the employer).

Costs and penalties

If employers repay monies they claimed in error this will prevent any potential tax liability and penalties from being charged by HMRC relating to the overpayment of the grant. Notification of any over claimed furlough grant payments must be made by the latest of the following notification periods:

- 90 days after receiving the over claimed payment;
- 90 days after circumstances changed for the employer which meant the furlough claim was no longer applicable; and
- 20 October 2020.

Failure to report the error in the claims can result in the following costs and penalties for the employer:

- Income tax assessment charge on the full over claimed amounts. The assessed amount will be due 30 days after the assessment (otherwise interest will be charged on the tax);
- 100% penalty for failing to notify HMRC, within the notification period, that the employer is chargeable for income tax on an over claimed furlough grant;

October 2020

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- company officers who knew of the over claimed grant can be made personally liable to pay the tax charged in the case of insolvency if the over payment cannot be recovered from the company;
- details of employers that deliberately over claim may be published on HMRC's deliberate defaulters list;
- partners will be jointly and severally liable for any over claimed grants repayable by partnerships.

Criminal exposures

Where claims to CJRS made were fraudulent, companies and directors could potentially be subject to criminal charges.

Recently, an accountant and a company director from east London were arrested on suspicion of £70,000 furlough fraud following an HMRC investigation. Company assets, such as electronic equipment, have also been seized, while bank accounts relating to the business were frozen.

This serves as a warning not only to those who have abused the furlough scheme but also those that may have made a mistake somewhere in their calculations. If such a mistake is discovered, and the employer fails to come forward under the mechanisms set out above, they could ultimately face similar ramifications.

Why this matters and why you need to act now

Businesses currently have a range of competing objectives to deal with, and a lengthy HMRC CJRS investigation is not something that you will want to add to that list.

HMRC has clearly shown that early detection of furlough errors and repayment of over claimed grants will not expose businesses or their officers to sanctions and penalties. However, should errors be identified as the result of an HMRC investigation, the businesses could be exposed to significant risks and penalties as set out above.

HMRC says it will not charge a penalty if firms did not know they had over claimed a CJRS grant at the time they received it, or when their circumstances changed, and they pay it back within 12 months of a company's financial year-end, or by 31 January 2022 for sole traders/partnerships.

Furthermore, given the risks, penalty and reputational exposures discussed above, furlough claims will be a fundamental focus area for statutory audits and transactional due diligence projects. We would advise all businesses in receipt of furlough grants to ensure that they can support their claims made and they have identified any furlough grants that need to be returned to HMRC.

How we can assist

We advised over 50 businesses on the making of their furlough claims and therefore have a leading knowledge on how the furlough scheme operates and how claims should have been made. You can see from our [Coronavirus Business Support Guide](#) that we kept pace with the evolving rules and the changes throughout the period from March to October 2020.

Using our combined knowledge of the furlough scheme, our auditing expertise and our approaches developed in assisting businesses with corporate governance risk areas such as Senior Accounting Officer compliance and Corporate Criminal Offence compliance, we are able to offer the following services to assist businesses in identifying potential risk issues in connection with furlough claims:

- risk assessment of furlough claims made (review of paperwork and submission details);
- auditing of furlough grants claimed through sample testing or payroll, timesheets, staff log-on and building access data);
- ensuring that supporting documentation for furlough claims is correct and complete so that this can be handed over to HMRC or transaction partners in the event of enquiries;
- assisting with the response to any HMRC investigation or commercial enquiry into furlough claims; and
- assisting you with the transition of your furlough claims to the JSS from 1 November 2020.

Next steps

For many businesses, the 20 October 2020 notification deadline will be critical. If you believe that you need to make a notification by this date, we would recommend that you give this matter your urgent attention.

For other businesses, we believe that we can add significant value by assisting you in preparedness for an HMRC audit or simply providing management with peace of mind that the furlough claims are accurate.

We have a dedicated team to assist you with your compliance with this matter, so please do not hesitate to contact your usual Rawlinson & Hunter contact or a member of our team below for further information.

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This publication and all other recent Rawlinson & Hunter LLP updates, including technical support on COVID-19 related initiatives, please see the technical updates section on our website [here](#).

Additionally, to assist our clients and readers in sourcing relevant information about government initiatives, financial assistance, guides and support eligibility, we have set up a dedicated COVID-19 Business Relief website containing technical resources and insights. We will be updating [this hub](#) regularly as new information becomes available. View our [COVID-19 resource hub here](#).

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