COVID19- Practical experience of claiming tax reliefs

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HMRC has been at the forefront of the Government's efforts to support businesses and individuals, notably through the Job Retention Scheme and other similar measures that provide for payments of grants. The pace of change with which HMRC has devised systems and processes to deliver on this has been extraordinary.

Additionally, HMRC has also been seeking to support businesses meeting their usual tax filing and tax payment obligations, beyond the announcement of the VAT payments to 30 June being deferred to next year. This has included businesses being able to agree with HMRC a deferral of PAYE duties and of corporation tax payments to 30 June, where the business had been impacted by COVID-19. However, now that 30 June has passed, many businesses will want to understand what options exist that will assist with managing their available cashflow.

This article sets out the main areas to consider and the key points to be aware of, based on recent experience of how the various schemes are working in practice.

Research and Development ("R&D") credits

Engaging with HMRC to submit and fast-track R&D claims generates access to this available cash support. However, whether claims are made as part of the Large Company R&D Expenditure Credit regime or the Small & Medium sized R&D Credit regime, HMRC will first check whether there are any other outstanding liabilities that the business has with HMRC. If there are, HMRC will set off these R&D amounts against those liabilities, and only any remaining balance will lead to a cash payment.

Representations were made to HMRC to highlight the impact of the automatic set-off approach on cash flow management, particularly if other amounts had been informally deferred to 30 June. However, despite good engagement and consideration, HMRC was unable to relax the rules because the law is very clear on the requirement for HMRC to set off overpayments against underpayments first. It is important, therefore, for any cash forecasts that rely on R&D claims (or any other repayments, as set out below) to factor in automatic set off by HMRC that reduce other liabilities.

Repayments of Corporation Tax

HMRC recently amended its external guidance to confirm that HMRC will now repay Quarterly Instalment Payments ("QIPs") paid for a previous period where the repayment claim is based on current year losses that have arisen from 'exceptional circumstances'. These exceptional circumstances are aimed at businesses that have been affected by COVID-19 such that current year losses, which, whilst incapable of being finalised before year-end, can nonetheless reasonably be evidenced now and therefore would be expected to ordinarily generate a loss carry back claim in the fullness of time.

This revised approach by HMRC will apply to situations where the previous period has ended but the company tax return has not yet been filed, for example, a period ended 31 December 2019 with a filing date of 31 December 2020.

The new guidance makes it clear that HMRC will require appropriate evidence of the quantum of current year losses as the basis for making a repayment of previous year QIPs, such as management accounts, forward looking reports to the Board of Directors and any public statements. This is very welcome news, as previous practice had been that such evidence was not sufficient to claim a repayment of amounts already remitted.

The ability to make an early repayment claim also applies to non-QIP payers, albeit the period to make such claims is shorter. For these companies, a claim due to exceptional circumstances for repayment of corporation tax that has been paid by the due date (nine months and one day after the period end) can be made before the filing date for the company tax return. Similar evidence of the losses will be required by HMRC.

"Time to Pay" arrangements

As tax payments, including any deferred amounts, become due, a business that will be unable to meet these payments in full will be required to enter into a formal time to pay ("TPP") arrangement with HMRC. These arrangements are formally signed off by the HMRC Debt Management and Banking ("DMB") unit, but for large businesses, the initial discussion should take place with the Customer Compliance Manager ("CCM"). Securing the support of the CCM will be useful in helping the TTP application through the HMRC internal review process.

We are expecting the DMB personnel to be more understanding of the cash constraints that businesses are managing due to these extraordinary and unforeseen circumstances and therefore that sensible payment proposals will be accepted. The ease of acceptance will continue to be informed by cash flow forecasts and the key risk measurements of the amounts involved, the length of time required to pay and the previous compliance history of the business. However, a further important component will include demonstrating to HMRC/ DMB that the business has exhausted all other avenues of financial support, such as, from banks and from shareholders.

Note also that any TTP agreement must reflect that the business will continue to pay future liabilities as and when they fall due and that any TTP balance must be settled if the business circumstances improve. This final point includes HMRC setting off any repayments of tax that arise during the period of the TTP agreement.

Behavioural expectations

There is a general view that the reliefs are generous, and companies are expected to be fully compliant when claiming them. This is particularly the case under the Covid19 Job Retention Scheme ("CJRS") under which the salaries of furloughed staff are supported by subsidy. Companies are expected to ensure that claims are accurate and meet the conditions: in particular the requirement that furloughed staff do not undertake any work for the company.

Treasurers will also be aware of the various comments in the public press regarding the expectation that companies which are supported by the government will, in return, contribute to the public good. It will therefore be necessary to consider whether seeking reliefs from HMRC may impact on future expectations as to the company's actions.

Conclusions

Companies have a number of avenues by which they can mitigate UK tax cashflows by agreement with HMRC. However, each of these routes has specific rules regarding what mitigation is available, what evidence is required, and how any potential repayment interacts with other liabilities. In all cases, HMRC have an element of discretion. Companies should plan carefully the approach to HMRC in order to achieve the optimal result.

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