

Draft New Clause and Schedule: Taxation of coronavirus support payments

Summary

1. This new clause and Schedule ensure that particular grants to help businesses, employers and individual partners of partnerships affected by the coronavirus crisis are taxable income. This includes payments made under the Coronavirus Job Retention Scheme (CJRS), the Self-Employment Income Support Scheme (SEISS) and other business-supporting grant schemes announced by the government and the Devolved Administrations. The legislation ensures that grants made under the Schemes are within the scope of tax and included as revenue for income tax and corporation tax purposes. The provisions also provide HM Revenue & Customs (HMRC) with additional compliance and enforcement powers in relation to the CJRS and SEISS.

Details of the clause

2. Subsection 1 introduces the new Schedule “Taxation of coronavirus support payments” into [Schedule X of Finance Act 2020].
3. Subsection 2 defines “coronavirus support payment” for the purposes of the clause and Schedule. It also provides that the Treasury may, by regulations under this section, specify or describe payments made under any scheme to be a “coronavirus support payment”.
4. Subsections 3 and 4 explain the scope of any regulations made by the Treasury for the purposes of the Schedule.
5. Subsection 5 defines “coronavirus”, “coronavirus disease”, “coronavirus business support grant”, “coronavirus job retention scheme” and “self-employment income support scheme” for the purposes of the clause and Schedule.
6. Subsection 6 provides a non-exhaustive list of “coronavirus business support schemes”.

Details of the Schedule

7. Paragraph 1 deals with the treatment of coronavirus support payments where they relate to a business.
8. Subparagraph 1 states that paragraph 1 applies if a person carrying on, or who carried on, a business (whether alone or in partnership) receives a coronavirus support payment that is referable to the business.

9. Subparagraph 2 provides that a coronavirus support payment is a receipt of income and must be brought into account in calculating the profits of a business for income tax or corporation tax purposes.
10. Subparagraph 3 provides that, subject to paragraph 2(5), paragraph 1(2) above does not apply where the business to which the payment relates to is no longer carried on by the recipient and the amount does not relate to the business when it was carried on by the recipient.
11. Subparagraph 4 states that where the coronavirus support payment relates to more than one business or activity by the same person, the amount should be apportioned between the businesses or activities on a just and reasonable basis.
12. Subparagraph 5 states that paragraph 3 sets out when a coronavirus support payment is, or is not, referable to a business for the purposes of paragraphs 1 and 2.
13. Subparagraph 6 defines, non-exhaustively, the term “business” for the purposes of the Schedule.
14. Paragraph 2 deals with the treatment of the payment where it relates to a business but not to its activities because the business has ceased, and a receipt has not been brought into account under paragraph 1.
15. Subparagraph 1 states that paragraph 2 applies if a person who carried on a business (whether alone or in partnership) receives a coronavirus support payment that is referable to the business and is not wholly referable to activities of the business undertaken while the business was being carried on by the recipient.
16. Subparagraphs 2 – 4 state that a payment that relates to a business that has ceased will be treated as a post-cessation receipt of the business to which it relates.
17. Subparagraph 5 deals with cases, such as an investment business, where the recipient does not carry on a trade, profession, vocation or a UK or overseas property business. It states that for the purposes of paragraph 1(3), the business to which the payment relates will be treated as if it is being carried on and the payment will be brought into account as a receipt of that business.
18. Subparagraph 6 allows deductions against the payment brought into account, under paragraph 1(2), that are referable to it and would have been allowed had the business been carried on at the time of the receipt of the payment.
19. Subparagraph 7 disallows the deduction of cessation costs against the payment brought into account under paragraph 1(2).
20. Paragraph 3 deals with the amount of coronavirus support payments referable to a business in certain cases.
21. Subparagraph 1 provides that a payment made under the CJRS is only a receipt of the business of the person entitled to the payment as an employer. This will be the PAYE employer, i.e. the CJRS claimant.
22. Subparagraph 2 states that a payment made under the SEISS is referable to the business of the individual to whom the payment relates.

23. Subparagraph 3 states that where a payment made under the SEISS is brought into account under paragraph 1(2), the whole of the amount is treated as profits of the tax year 2020-21.
24. Subparagraph 4 applies where a payment made under the SEISS that relates specifically to an individual partner of a firm is retained by that partner in its entirety. It provides that the payment is not referable to the business of the firm.
25. Subparagraph 5 provides for the treatment of the payment where paragraph 3(4) above applies. The payment is added to the partner's share of the partnership's profits and is excluded from the calculation of the partnership's profits.
26. Paragraph 4 deals with certain exemptions, reliefs and deductions in relation to coronavirus support payments.
27. Subparagraph 1 treats payments that relate only to mutual activities of a business that carries on a mutual trade as income arising from those activities. Therefore, to the extent that any such income is outside the scope of tax, the payment may be too.
28. Subparagraph 2 provides that the coronavirus support payment is ignored for the purposes of the calculations to determine eligibility for specified exemptions and conditions in this subparagraph.
29. Subparagraph 3 provides that a payment made under the CJRS is ignored for the purposes of the calculations to determine eligibility for the exemptions specified in this subparagraph.
30. Subparagraphs 4 and 5 provide that for the purposes of an amount paid under the SEISS, the trading income allowance cannot be deducted from any amount that relates to the payment though may be deducted from ordinary sales income.
31. Subparagraph 6 disallows deductions for pre-trading employment expenses where a payment made under the CJRS relates to those costs.
32. Paragraph 5 deals with the charge to income tax where the employment costs are deductible by another person.
33. Subparagraph 1 provides that income tax is charged on a coronavirus support payment made under the CJRS if conditions A and B are met.
34. Subparagraph 2 states that condition A is that the amount of the payment is neither brought into account under paragraph 1(2) of the Schedule in calculating the profits of a business carried on by the person entitled to the payment as an employer, nor is it treated by paragraph 2(3) or (4) as a post-cessation receipt arising from carrying on such a business.
35. Subparagraph 3 states that condition B is that expenses incurred by another person in respect of the same employment costs which are the subject of the payment, and to which the amount relates, are deductible in either calculating the profits of a business carried on by another person or in calculating the liability of another person to tax charged on post cessation receipts.
36. Subparagraph 4 states that tax is charged under paragraph 5(1) on the whole of the amount to which that subparagraph applies.

37. Subparagraph 5 states that the person liable for tax charged under paragraph 5(1) is the person entitled to the coronavirus support payment as an employer.
38. Subparagraph 6 provides that section 3(1) of Corporation Tax Act (CTA) 2009 does not apply to an amount of a coronavirus support payment that is charged under paragraph 5 and it will therefore not be excluded from the charge to income tax.
39. Paragraph 6 deals with the charge to tax where no business is carried on.
40. Subparagraph 1 provides that tax is charged on an amount of a coronavirus support payment, other than a payment made under the CJRS or SEISS, if the amount is neither brought into account under paragraph 1(2) of the Schedule in calculating the profits of a business, nor treated as a post-cessation receipt under paragraph 2(3) or (4) and the recipient of the payment did not carry on a business whose profits are charged to tax and to which the payment could be referable at the time of its receipt.
41. Subparagraph 2 defines “tax” for the purposes of paragraph 6.
42. Subparagraph 3 states that tax is charged under paragraph 6(1) on the whole of the amount to which that subparagraph applies.
43. Subparagraph 4 states that the person liable for tax charged under paragraph 6(1) is the recipient of that amount.
44. Subparagraph 5 provides that where income tax is charged under paragraph 6(1), the exemption and income condition for charitable trusts in sections 527 and 528 of Income Tax Act (ITA) 2007 will have effect as if paragraph 6(1) were a provision to which section 1016 of that Act applies.
45. Subparagraph 6 provides that where corporation tax is charged under paragraph 6(1), the exemption and income condition for companies in sections 481 and 482 of Corporation Tax Act (CTA) 2010 will have effect as if paragraph 6(1) were a provision to which section 1173 of that Act applies.
46. Paragraph 7 provides the Treasury with the power to modify by regulations any provisions of the Tax Acts for the purposes of the treatment of the receipts under paragraph 1(2) or post-cessation receipts under paragraph 2(3) or (4).
47. Paragraph 8 imposes an income tax charge on a person who has received a coronavirus support payment to which they are (either wholly or partially) not entitled.
48. Subparagraph 1 imposes an income tax charge on the recipient of a coronavirus support payment, other than one made under a coronavirus business support grant scheme, in respect of the amount which the recipient is not entitled to under the rules of the relevant scheme.
49. Subparagraph 2 states that the circumstances in which a person is not entitled to a coronavirus support payment includes where they cease to be entitled to it after they have received it, either because of a change of circumstances or because it was not used for the purposes for which it was paid.
50. Subparagraph 3 sets out the time at which the payment becomes taxable under this paragraph. Where the recipient ceased to be entitled to the payment after it was

received, that is the time that they ceased to be entitled to it. Otherwise, it is the time it was received.

51. Subparagraph 4 sets out the amount of the charge as 100% of the amount the recipient was not entitled to less any amount repaid to HMRC.
52. Subparagraph 5 states that if income tax is charged on a coronavirus support payment under paragraph 8 of the Schedule then paragraphs 1 to 6 of the Schedule do not apply to that amount, that amount is not to be treated as an amount of income on which the taxpayer is charged to income tax for the purposes of Step 1 of the calculation in section 23 of ITA 2007, and that amount is not to be treated as income of a company for the purposes of section 3 of CTA 2009.
53. Subparagraph 6 provides that no loss, deficit, expense or allowance is to be taken into account, deducted from, or offset in calculating the amount charged to income tax under paragraph 8 of the Schedule.
54. Subparagraph 7 states that in calculating profits or losses for the purposes of corporation tax, no deduction is allowed in respect of the payment of income tax charged under paragraph 8 of the Schedule.
55. Subparagraph 8 states that, where relevant in these provisions, a firm is not to be regarded as having received a SEISS payment where the recipient partner is entitled to and retains the whole amount rather than it being distributed amongst the partners.
56. Paragraph 9 deals with assessments and returns for income tax chargeable under paragraph 8 of the Schedule.
57. Subparagraph 1 provides for an officer of HMRC to make an assessment where they consider a person has received an amount of a coronavirus support payment to which they were not entitled. This assessment will be in the amount the officer considers ought to be charged under paragraph 8 of the Schedule.
58. Subparagraph 2 provides that an assessment may be made at any time after the person received the payment, subject to the time limits set out at sections 34 and 36 of Taxes Management Act (TMA) 1970.
59. Subparagraph 3 provides that Parts 4 to 6 of TMA 1970 apply to an assessment under paragraph 9(1) of the Schedule. These are the provisions relating to assessments and claims, reviews and appeals, payment of tax, and collection and recovery of tax. The subparagraph particularly mentions appeals and the payment date of income tax payable by assessment.
60. Subparagraph 4 states that where income tax is chargeable under paragraph 8 in relation to an overpaid coronavirus payment received by a firm, a single assessment to recover the amount due may be made on any of the partners. The partners are jointly and severally liable to pay such an assessment. If one of the partners includes the total charge in their tax return, this relieves the other partners of the obligation to do so in their returns.
61. Paragraph 10 deals with the calculation of the income tax liability.

62. Subparagraph 1 states that the calculation rules in section 23 of ITA 2007 apply in relation to a person liable to an income tax charge under paragraph 8 of the Schedule by stating that paragraph 8 is effectively added to the lists of provisions in sections 30(1) and (2) of ITA 2007.
63. Subparagraph 2 provides that for the purpose of determining the tax year for which there is a relevant obligation under Schedule 41 to Finance Act (FA) 2008, income tax charged under paragraph 8 of the Schedule relates to the year in which it became chargeable.
64. Subparagraph 3 states that paragraph 10(1) of the Schedule does not apply to a company to which paragraph 11 of the Schedule applies.
65. Paragraph 11 deals with the calculation of the tax liability for companies chargeable to corporation tax.
66. Subparagraph 1 applies where a person liable to an income tax charge under paragraph 8 of the Schedule is a company chargeable to corporation tax, or chargeable as if it was corporation tax, in relation to a period in which that payment was received.
67. Subparagraph 2 states that certain provisions of the rules set out in Part 5A TMA 1970 (payment of tax) apply to income tax charged under paragraph 8 of the schedule as if it were corporation tax.
68. Subparagraph 3 states that the rules set out in Schedule 18 to Finance Act (FA) 1998 apply in relation to that company as if any reference in that Schedule to “tax”, other than the references in paragraph 2 of that Schedule (duty to give notice of chargeability), included income tax charged under paragraph 8 of the Schedule, and in paragraph 8(1) of that Schedule (calculation of tax payable), at the end there were inserted a Step 6 to add any amount of income tax chargeable under paragraph 8 of the Schedule.
69. Subparagraph 4 states that for the purposes of Schedule 41 to FA 2008 income tax charged under paragraph 8 of the Schedule is excluded from references to income tax in paragraph 7(2) of that Schedule but included in references to corporation tax in paragraph 7(3). However, paragraph 7 of that Schedule may be disapplied in accordance with paragraph 13(5) of the Schedule when a failure to notify is to be treated as deliberate and concealed.
70. Subparagraph 5 provides that for determining the period for which there is relevant obligation under Schedule 41 to FA 2008, income tax charged under paragraph 8 of the Schedule relates to the company’s accounting period in which it became chargeable.
71. Paragraph 12 deals with notifying liabilities under paragraph 8 of the Schedule.
72. Subparagraph 1 imposes a requirement to notify chargeability under section 7 of TMA 1970 in respect of income tax chargeable under paragraph 8 of the Schedule.
73. Subparagraph 2 provides that the fact that the person has already received a notice under section 8 of TMA 1970 requiring them to deliver a return of the person’s total income and gains does not remove the requirement to notify chargeability under

paragraph 12(1).

74. Subparagraph 3 sets the time limits for notifying chargeability under paragraph 12(1) as the later of 30 days after this Act received Royal Assent or 30 days after the income tax becomes chargeable in accordance with paragraph 8(3) of the Schedule.
75. Subparagraph 4 removes the requirement to notify chargeability under paragraph 12(1) for a year of assessment where the person is not liable to income tax under paragraph 8 of the Schedule for that year.
76. Subparagraph 5 provides that one partner can discharge the obligation under paragraph 12(1) to notify income chargeable under paragraph 8, in relation to an amount of coronavirus payment received by a firm and relieves the obligation of the other partners to do so.
77. Paragraph 13 deals with penalties where a failure to notify is connected to deliberate conduct.
78. Subparagraph 1 states that the paragraph applies where the person who failed to notify chargeability in respect of an amount of income tax chargeable under paragraph 8 of the Schedule knew, at the time the income tax first became chargeable, that they were not entitled to the amount of the coronavirus support payment on which the tax is chargeable.
79. Subparagraph 2 explains how the rules at Schedule 41 to FA 2008 (penalty for failure to notify) apply where this paragraph applies.
80. Subparagraph 3 states that the failure described in paragraph 13(1) is treated as deliberate and concealed for the purposes of Schedule 41 to FA 2008.
81. Subparagraph 4 states that because the failure is treated as deliberate and concealed, paragraph 6 of Schedule 41 to FA 2008 (standard amount of penalty) is to be read as if the references to “deliberate but not concealed act or failure” or “any other case” were omitted.
82. Subparagraph 5 states the potential lost revenue used in the calculation of the amount of penalty charged by Schedule 41 to FA 2008, is treated as the amount of income tax which would have been chargeable under paragraph 8 of the Schedule on the last day of the notification period set by paragraph 12(3) of the Schedule.
83. Paragraph 14 sets out a number of provisions about the penalty for failure to notify income chargeable under paragraph 8, in relation to an amount of coronavirus payment received by a firm.
84. Subparagraph 1 provides that this paragraph applies where none of the partners of a firm notifies a liability to income tax chargeable under paragraph 8, in relation to an amount of the coronavirus support payment received by the firm.
85. Subparagraph 2 provides for a penalty under paragraph 13(1) if one of the partners knew, at the time the income tax first became chargeable, that the firm was not entitled to the amount of the coronavirus support payment on which the tax is chargeable.
86. Subparagraph 3 provides that any or all partners in a firm liable to a charge under

paragraph 8, in relation to an amount of the coronavirus support payment received by the firm, will be liable to a single penalty for failure to notify on a joint and several basis.

87. Subparagraph 4 provides that where no partner knew that the firm was not entitled to the amount of the coronavirus support payment at the time the income tax first became chargeable, but where the subsequent failure to notify was deliberate or deliberate and concealed, penalties under Schedule 41 to FA 2008 apply based on these behaviours.
88. Subparagraph 5 provides for when the amount of “potential lost revenue” for the purposes of the failure to notify penalty must be calculated depending upon whether paragraph 13 applies, in which case it is at the end of the notification period, or otherwise where it is at 31st January following the end of the tax year.
89. Subparagraph 6 provides that paragraph 22 of Schedule 41 to FA 2008 does not apply to Limited Liability Partnerships, as for the purposes of a penalty under this paragraph they are treated as if they were a partnership.
90. Paragraph 15 provides for HMRC to issue notices to make certain individuals connected to an insolvent company, jointly and severally liable for the company’s tax liabilities arising from a deliberate act to claim or retain amounts of CJRS payments for which the company is not eligible.
91. Subparagraph 1 provides that an individual is jointly and severally liable for the income tax liability of a company in relation to a liability under paragraph 8 where HMRC issues a notice. It also provides how such a notice can be modified and for certain rights and safeguards of the taxpayer such as review and appeal rights, as set out in paragraphs 10 – 15 of Schedule 12 to this Act (joint liability notices dealing with tax avoidance, tax evasion and repeated insolvency and nonpayment).
92. Subparagraphs 2 – 6 detail the conditions which must apply, in the opinion of an officer authorised for that task, before HMRC may issue a notice. They are:
 - The company has entered into an insolvency procedure, or there is a serious risk it is going to do so (Condition A)
 - The company is liable to income tax under paragraph 6 (Condition B)
 - That the person to whom the notice is issued was responsible for the management of the company at the time the income tax liability arose and knew that it was not entitled to the amount of the coronavirus support payment (Condition C)
 - That it is a serious possibility some or all of that liability will not be paid (Condition D)
93. Subparagraph 7 defines for the purposes of paragraph 15(5) an individual who is responsible for the management of a company.
94. Subparagraph 8 details the information a notice must contain.
95. Subparagraph 9 provides that the recipient of a notice is jointly and severally liable for the company’s liabilities to HMRC for amounts of income tax specified in the

notice and provides for how this amount may be varied.

96. Subparagraph 10 provides how paragraphs 10 to 15 and 17 of Schedule 12 to this Act apply to a joint and several liability notice issued under this paragraph.
97. Subparagraph 11 provides that the expressions used in this paragraph have the same meaning as they have in Schedule 12 to this Act.

Background note

98. Various publicly-funded grant schemes have been announced to provide support to UK businesses affected during the coronavirus crisis.
99. The new provisions ensure that grants made under the CJRS, the SEISS and other business-supporting grant schemes (of which examples have been listed in subsection 6 of the clause) to businesses, individual partners of firms and employers are within the scope of tax as income and that the recipient is chargeable to tax.
100. For grants made under the CJRS, the recipient of the grant is taxed if the employees are working in a UK taxable business (to ensure that any deduction for employee expenses met by the grant is matched by taxation of the grant covering those expenses). Grants paid under the CJRS in respect of employees not working for a business are outside the scope of tax.
101. For grants made under the SEISS, the recipient of the grant is taxed on the amount as if it were profits of the trade to which it relates in the 2020-21 income tax year. The provisions provide that where, as is expected to be the case in most circumstances, the SEISS grant is retained by the individual partner (and does not feature in the firm's calculation of partnership profits) the grant is treated as taxable income of the partner alone, rather than of the partnership.
102. The provisions give the Treasury the power to specify, by regulations, other coronavirus support schemes that will fall within the scope of this legislation.
103. The Schedule provides HMRC with compliance and enforcement powers in order to ensure that the schemes it is responsible for are administered properly and protected from fraudulent claims. The provisions therefore make clear that HMRC can use its information and inspection powers to check a SEISS or CJRS claim has not been overpaid and that a CJRS payment has been used to pay employee costs, PAYE, National Insurance contributions (NICs) and make pension contributions.
104. HMRC will also, through these provisions, have the power to recover payments, by imposing a 100% tax charge, from anyone who has received a payment under the Schemes to which they are not fully entitled or anyone who has not used a CJRS payment to pay employee costs, PAYE, NICs and make pension contributions, and to charge a penalty where HMRC can demonstrate that an applicant has behaved deliberately.
105. The provisions give HMRC powers to make an officer of an insolvent company jointly and severally liable for the Income Tax charge raised in relation to any CJRS payment to which the company was not entitled or any CJRS payment which was

never intended to be used to pay employee costs, PAYE, NICs and make pension contributions in certain circumstances. Those circumstances are where the officer is culpable for making a deliberate CJRS claim to which the company was not entitled and where the company enters insolvency. These powers also apply where HMRC can meet certain tests showing there is a serious risk that the company will be unable to pay the Income Tax assessment.

106. Any comments on the clause and Schedule should be sent to businessprofits.admin@hmrc.gov.uk.

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