



Guidance on the treatment, and corrective action necessary, in relation to errors regarding the coronavirus job retention scheme

Illustrative examples

The following examples are intended to help illustrate the January 2021 PCRT guidance ('the January guidance') in relation to the treatment, and corrective action necessary, for errors relating to the coronavirus job retention scheme (CJRS). They are not intended to be exhaustive.

Key to examples:

1. Use of fixed or variable pay to calculate CJRS grants for employees with overtime
2. Calculation of usual hours where furlough ends during a period
3. Use of 1/12 of annual salary for a fixed pay employee
4. Short-cuts to calculating reference pay for variable pay employees
5. Reductions in, or deductions from, salary

Although this is referenced in the January guidance, we should highlight that in circumstances which are not considered to be a reasonable interpretation of the guidance, and result in the employee not receiving 80% of their reference / usual pay, corrective action is necessary to ensure that the entire grant in relation to that individual is not repayable.

These examples have been reviewed by HMRC.

Example 1 – use of fixed or variable pay to calculate CJRS grants for employees with overtime

Issue

The choice between fixed and variable pay could have a significant impact for a person who works a lot of overtime.

Prior to 7 August 2020, and recognising that there would be some 'borderline' cases, HMRC's published guidance allowed the employer to choose whichever method best reflected how the employee was paid. As such an employer could take multiple factors in to account when making this choice and HMRC confirmed that provided employers acted reasonably they would not decline or seek repayment of any grant based solely on the particular choice of pay calculation.

On 7 August further guidance was published, confirming that employers should use the variable pay method so any fluctuations due to overtime would be averaged out over the year.

Impact

For claims made before 7 August, HMRC accept that it was a reasonable interpretation for employers to have treated such employees as having had fixed pay. No amendment is necessary to any previous claims.

For claims made after 7 August, employers should have used the variable pay method. HMRC do NOT accept that claims made on the fixed pay basis are a reasonable interpretation of the guidance. These should be corrected in accordance with the January guidance.

Example 2 – calculation of usual hours where furlough ends during a period

Issue

The Direction and the guidance set out clear rules for calculating the usual hours of employees with regular hours and variable hours.

However, initial iterations of the guidance could be read to imply that:

- usual hours should be calculated for the entire claim period
- the claim period includes days on which any of the business' employees are furloughed
- employers can claim CJRS for employees' annual leave taken during the claim period

Therefore, some employers considered that they should include all unworked hours in their calculation and claim, even where those hours fell after the end of the employee's furlough agreement. This could lead to increased claims if the employee was off work for some other reason after ending furlough. The guidance did not explicitly state that days the employee was not subject to a furlough agreement must be excluded from the usual hours calculation.

On 11 September 2020 the guidance was updated to include a new subsection 'Work out your employee's usual hours and furloughed hours' to tell employers how to calculate the number of working and furloughed hours for an employee that comes off furlough or flexible furlough partway through a claim period.

Impact

For claims made before 11 September, HMRC accept that it was a reasonable interpretation for employers to have calculated claims in the manner set out above. No amendment is necessary to any previous claims.

For claims made after 11 September, employers should have used the revised method. HMRC do NOT accept that claims made in the manner set out above are a reasonable interpretation of the guidance. These should be corrected in accordance with the January guidance.

Example 3 - Use of 1/12 of annual salary for a fixed pay employee

Issue

The guidance in relation to fixed pay employees has remained largely consistent throughout – requiring the employer to identify the employee's reference period and to use the wages payable during that reference period as the basis for the claim.

Instead of doing the above, some employers have simply used 1/12 of the employee's current annual salary as the basis for the claim. This can result in discrepancies, for example if there have been changes to the employee's pay, irregular pay periods etc.

Impact

Because the guidance has been clear throughout, any differences between the amount of the claim calculated by the employer, and that if claimed on the correct basis, should be corrected in accordance with the main guidance.

Example 4 – Short-cuts to calculating reference pay for variable pay employees

Issue

The guidance in relation to employees whose pay varies has remained largely consistent throughout – requiring (for pre 31 October 2020 claims) the employer to calculate the higher of

- wages earned in the corresponding calendar period in a previous year
- average wages payable in the tax year 2019 to 2020

We are aware of a number of ‘short-cuts’ that employers have used to calculate reference pay for variable pay employees, such as:

- Calculating usual wages and / or usual hours
 - By reference to the corresponding calendar period in a previous year but without comparing to averages wages payable in 2019-20
 - By reference to averages wages payable in 2019-20 but without comparing to the corresponding calendar period in a previous year
- Calculations undertaken based on weeks rather than days
- Working days used rather than calendar days

Impact

Because the guidance has been clear throughout, any differences between the amount of the claim calculated by the employer on the ‘short-cut’ basis, and that if claimed on the correct basis, should be corrected in accordance with the main guidance.

Note – HMRC have confirmed that when considering the ‘corresponding calendar period’, it is acceptable to use the same calendar days (i.e. the same dates in a previous year) or the corresponding pay period, provided it is used consistently.

Example 5 – Reductions in, or deductions from, salary

Issue

In some instances employees have agreed to accept a reduction in salary in order to remain employed. Some employers have then used this reduced salary as the basis for calculating the CJRS claim; rather than being based on their reference salary or usual pay for the reference period.

Further, some employers with employees on salary sacrifice arrangements have used the pre-sacrifice amount of salary when calculating the CJRS claim rather than the post-sacrifice salary.

Both of these processes have resulted in excessive CJRS claims.

Impact

Whilst the guidance in relation to deductions from salary was not published until 21 May 2020, this simply stated that employee-authorised salary deductions can be made from grant payments. It did not alter the calculation of the grant itself, and the guidance on this has been clear throughout.

Any differences between the amount of the claim calculated by the employer based on the reduced / post-salary sacrifice salary, and that if claimed on the correct basis, should be corrected in accordance with the January guidance.

Association of Taxation Technicians

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