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The Rt Hon Rishi Sunak MP
Chancellor of the Exchequer
HM Treasury
The Correspondence and Enquiry Unit
1 Horse Guards Road
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29 April 2020

Dear Mr Sunak,

ANNUAL PAYROLL EMPLOYERS – REJECTED FROM ‘FURLOUGH’ SCHEME

I am writing about The Coronavirus Act 2020 Functions of Her Majesty’s Revenue and Customs (Coronavirus Job Retention Scheme) Direction (the “CJRS directive.”)

I appreciate the fact that the government has had to act at unprecedented speed to implement a ‘furlough’ scheme to protect jobs. An HMRC representative told me on 20 April that some people will have “fallen through the cracks.” The purpose of this letter is to bring to your attention an entire group of people who have been unfairly excluded from the scheme, by virtue of the wording of the CJRS directive. I speak on behalf of over 50 clients who are directly affected by this issue. Not ‘fat cat’ directors, but ordinary small business owners trying to survive during this crisis. An HMRC representative told me on 28 April “it’s not just you, [to complain about this annual scheme payroll issue] I assure you.”

The Annual Payroll scheme allows an employer to submit one real time information (RTI) submission per tax year and pay employees once a year. It is utilised by small company directors e.g. a one director company where they can make one submission per year instead of once-a-month or weekly. This system has been used by many of my small limited company clients over many years and I have actively advised them of it as a legitimate way to cut down on admin and pay less accountancy fees to us! The end result is the same in terms of P60 issued and tax/NI paid by end of tax year. This annual salary still counts as income for tax/NI deductions and must still be disclosed where required e.g. on a self-assessment tax return and for a universal credit application.

Most annual payroll employers will use month 12 as their annual submission month. Month 12 runs from 6 March – 5 April, meaning an annual scheme employee can be paid and RTI submission sent to HMRC at any time during that period and any tax/NI deducted is then paid to HMRC by 19 April.

It is not reasonable to expect that any annual scheme company would submit an RTI submission before 19 March in any given tax year when the standard real time payment deadline for many years has always been 5 April. You have effectively retrospectively altered the standard 5 April deadline to 19 March, but still taken any annual tax/NI due by 19 April – only 3 days after the CJRS directive was issued.

The annual payroll scheme is utilised by small limited company 1-2 director company firms, and so excluding these people from the ‘furlough’ scheme disproportionately affects small company firms.

You have already excluded investment income (e.g. dividends) from any help scheme (another issue entirely) and so to exclude the salary income too, simply because a director/employee was on the annual payroll scheme is totally unjust. In contrast, you are supporting self-employed up to £50,000 and even gave them a grace period to file late tax returns and director paying themselves a weekly or monthly salary is covered, if they submitted RTI submission before 19 Mar.

For a long-term annual scheme director/employee i.e. those employed in 2018-19 tax year or earlier, their previous RTI submission to HMRC would have been made in the previous tax year e.g. month 12 of 2018-19 tax year. CJRS directive has specifically excluded earlier tax year RTI submissions from the 'furlough' scheme, even though the previous pay period for an annual scheme client is likely to be in 2018-19 tax year. This means you are excluding from the 'furlough' scheme annual scheme employees who have been notified to HMRC before 19 March, but in their previous pay period, in the previous tax year. I emphasise again that RTI submissions are made once-a-year under the annual scheme.

The CJRS directive is silent on the annual scheme and therefore it is my belief that it is not an intentional policy decision to exclude such persons from the scheme. I do not believe it was your intention to exclude these people as aside from the clear unfairness, it would make no sense if the sincere intention of the government is allow these small 1-2 director firms to 'hibernate' (as with employed/self-employed) rather than potentially go bust.

EXAMPLE: Both Mrs Smith and Mr Jones each individually run a small company each, where they are sole director and shareholder. They both use the payroll annual scheme to pay an annual salary in month 12 of £10,000 each. Both submit their once-a-year RTI submission to HMRC in month 12 by the 5 April.

In 2020, Mrs Smith has a quiet afternoon on 18 March and so submits her annual RTI submission on that day. Mr Jones has a quiet day 2 days later on 20 March and does the same. Both have submitted well within the established 5 April end of tax period deadline.

The CJRS directive makes 19 March the RTI filing deadline and makes no allowance for annual scheme and the fact that the previous submission from both Mrs Smith and Mr Jones would have been month 12 in 2018-19 tax year. The above example means that Mrs Smith can claim 80% under 'furlough' scheme, as RTI submission sent before 19 Mar, but Mr Jones cannot claim anything. Both have to pay the tax/NI owed on the annual salary by 19 April and declare the income if they file a self-assessment tax return or have to apply for universal credit.

This 'pot luck' scenario is surely a gross injustice by any reasonable standard, when it is commonly established that most people run payroll towards the end of the tax month/period in question, such as Mr Jones in my example.

RECOMMENDATIONS

I have advised my clients to this letter and details of how this issue is affecting them personally to their own MP (to bring to your attention) and also to complain to HMRC.

My suggestion is that you make a further directive to HMRC to amend the CJRS directive to resolve the above issues and allow annual payroll employers to claim, with some suggestions to consider as follows:

I suggest 5.(a).i is amended to make a submission made in 2018-19 tax year allowable, if the employer is registered as using the annual scheme.

I suggest you allow an employer to make a 'furlough' claim under the annual scheme, if the employer is registered with HMRC as being on the annual scheme as of 19 Mar 2020 and a RTI submission was received for that employee by 19th April 2020.

I appreciate that to facilitate such an unprecedented large number of claims, HMRC ideally needs an automated system. I suggest the current system could ask the question as to whether employees are paid annually, allowing a claim to be made if the answer is yes.

I would be happy to offer any assistance to HM Treasury and/or HMRC in reviewing the CJRS director, 'furlough' scheme and/or anything else that I could do to be useful.

RIGHT OF APPEAL

My final separate question is about right of appeal. There will be instances where an employer has a very reasonable excuse for not submitting an RTI submission by 19 March. For example, being incapacitated, illness, bereavement, system failure (where they can prove they generate payslips and paid salary but submission not registered correctly at HMRC's end) and reverting to monthly scheme with RTI submissions (after 19 March) due to no written guidance provided on how to claim for 'furlough' under annual scheme. It cannot surely be the intention of the government to exclude a single director company from the 'furlough' scheme because of any of the above reasons? Should hard working employees in a company be penalised and lose their jobs (by virtue of 'furlough' claim being rejected) for any of the valid reasons given above for their employer filing late?

Common sense suggests that a small company (e.g. with one director) is more likely to miss a filing due for reasons above and so small business is disproportionately affected. A larger company will be more likely to have a payroll team or multiple directors/managers to step in and file payroll if any one director is unwell or legitimately unavailable. This goes back to the question of fairness.

What right of appeal will the government offer these employers/directors and how can they appeal?

In March you said: "this struggle won't be overcome by a single package of measures. We will support jobs, income, businesses ... we will do whatever it takes."

Real people are suffering financial detriment, potential insolvency, huge worry and injustice as a result of what I have outlined throughout this letter.

I look forward to hearing back from you, hopefully with positive news that would be so gratefully received.

Yours sincerely,



Andy Tree
Managing Director