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Companies: managing risk in uncertain times

The Covid-19 pandemic impacts every business, even the best-run and longest-established. Managing risk and cash flow in these uncertain times is critical. In this Briefing, we cover areas of particular concern to companies and their owners.

Companies and cash

Positive cash flow will help your business weather the storm and the government has a raft of measures to help with immediate liquidity. The concomitant of this, however, is that a business can be accumulating liabilities that need to be settled when some normality returns, and it would be prudent to monitor this closely. At present, much debt recovery is on pause. But in the long run, underlying profitability needs to be such that your business can absorb expenses incurred during the coronavirus period.



For director-shareholders, there is another very important consideration. The company is legally distinct from its members. This means the need to remember general company law principles and fiduciary duties. Each point below should thus be reviewed not simply in terms of whether it enhances immediate liquidity, but in terms of director responsibility more widely.

What to do about payment of tax

Individuals and businesses severely impacted by Covid-19 can defer payment of some taxes.

VAT deferral

Payments of VAT due during the three months to the end of June can be deferred. If you are a UK VAT registered business, with a VAT payment due between 20 March and 30 June 2020, you can either defer payment until later, or pay as usual. VAT MOSS payments do not come within the scheme. There is no need to contact HMRC to do this: but if you usually pay by direct debit, this should be cancelled promptly – and reinstated at the end of the deferral period.

If you defer, no interest or penalties apply. You will carry on filing VAT returns as usual, and HMRC will carry on processing VAT reclaims and refunds. Taxpayers are given until 31 March 2021 to settle any outstanding VAT liability from the deferral period.

Income tax self assessment bills

The second income tax self assessment payment on account for 2019/20, due for payment by 31 July 2020 can be deferred until 31 January 2021 at the latest. Depending on your remuneration package and level of any other income, this may be something to consider. As with VAT, no action is needed to defer, and no interest or penalties will be charged.

Corporation tax

There is no option to defer corporation tax, which must be paid as usual. If there are difficulties here because of Covid-19, HMRC recommends negotiating Time To Pay (TTP). It would be prudent to set the wheels in motion as soon as possible.

Time To Pay from HMRC

Time To Pay tax is available for businesses or individuals in temporary financial distress because of Covid-19, and the government recommends its use. TTP can be used for

any tax, such as corporation tax, employers' PAYE, VAT. Arrangements are made by phone. Contact HMRC's Covid-19 helpline on 0800 024 1222, explaining that TTP is needed because of the crisis.

There is no standard TTP arrangement: it is always arranged to fit individual circumstances. Repayment is usually monthly by direct debit. Before you make contact, consider what you can realistically afford to repay. For information on what to have to hand when phoning, see bit.ly/2Rjphx5.

Government assistance for business

There are a number of schemes supporting businesses severely affected by Covid-19 which may be of relevance.

Coronavirus Business Interruption Loan (CBILS)

CBILS connects businesses with sources of finance - loans, overdrafts, invoice finance and asset finance of up to £5 million, for up to six years. It is delivered through commercial lenders and backed by the government-owned British Business Bank. The government is making a Business Interruption Payment covering the first 12 months of interest payment and any lender-levied fees. This means there are no upfront costs and lower initial repayments. Following initial criticism, CBILS has been amended so 'all viable small businesses affected by Covid-19, and not just those unable to secure regular commercial financing, will now be eligible should they need finance to keep operating during this difficult time'.

Businesses with annual turnover of £45 million or less, more than 50% of which comes from trading activity are eligible. There is a quick eligibility checklist here bit.ly/34og0CI.

The scheme runs for six months from 23 March 2020, initially. Use the British Business Bank website to select a lender you wish to approach - although it may make sense to apply to your current bank initially. Application should be made online. Loans below £250,000 do not require a personal guarantee. For borrowing above this

level, personal guarantees will be capped at 20% of the outstanding value of the loan, and your principal private residence is excluded.



Bounce Back micro loan funding

Responding to public concern, the government has announced new funding designed to get cash quickly to UK-based small businesses. Like CBILS, Bounce Back funding connects borrowers with commercial lenders, but it provides 100% government-backed loans and bypasses some of the more cumbersome aspects of the CBILS application process. To be eligible, small businesses need only be negatively impacted by Covid-19 and not classified as 'undertakings in difficulty' on 31 December 2019.

The scheme allows borrowers to access loans for 25% of turnover, from a minimum of £2,000 to a maximum of £50,000, with no interest or fees for the first 12 months. There is a repayment holiday for the same period. Application will be online, with minimal red tape. The scheme launched on 4 May 2020 bit.ly/3f0k6G5. Critically, payment should be received within days of application.

Note that Bounce Back funding cannot be used as well as the CBILS: the two are alternatives.

Support for high-growth and innovative companies

The Future Fund will launch in May 2020, providing government loans to UK-based companies, ranging from £125,000 to £5 million, subject to matched funding from private investors. These convertible loans may be an option if your business relies on equity investment and is unable to access the CBILS.

To be eligible, your business:

- must be based in the UK
- will need to attract equivalent matched funding from third party private investors and institutions; and
- must have raised at least £250,000 in equity investment from third party investors in the last five years.

Though the small print on eligibility is currently lacking, full details are expected shortly. The Future Fund is open until the end of September 2020. £250 million has been allocated to the scheme, with cut-off date and provision to be kept under review.

The government has also announced that research and development-intensive small and medium sized businesses may be able access a further £750 million in grants and loans, via Innovate UK. This will be allocated to existing Innovate UK customers on an opt-in basis, with scope for application from firms not currently receiving Innovate UK funding, as well.

Initial information on both the Future Fund and support via Innovate UK is here bit.ly/2Y5tjNw.

Coronavirus Job Retention Scheme (JRS)

You may already have used the JRS, but the scheme is still open if you need to furlough further employees, or use it for office holders such as directors (see below). Allowing employers to claim up to 80% of furloughed workers' wages, to a maximum of £2,500 per worker per month, JRS now runs for four months from 1 March 2020, rather than the three months initially proposed. The scheme stands to be extended if needed.

To be eligible, both employer and staff must fit gateway criteria. An employer is eligible to apply for JRS if it has a PAYE scheme created and started on or before 19 March 2020, is enrolled for PAYE online, and has a UK bank account. For staff or directors to be eligible, they must be paid via PAYE, and have been on the payroll on or before 19 March 2020, and have been notified to HMRC on an RTI submission on or before that date. They must also be formally put on furlough.

Using furlough to advantage: There are formal legal procedures to be followed when furloughing staff, and rules as to what they can and can't do during this time. They cannot carry out any work generating revenue for your business whilst on furlough, and the scheme cannot be used to keep a workforce on reduced hours.

Employees must be furloughed for a minimum of three consecutive weeks. They can however, be put on furlough more than once - with a minimum three-week period each time. Used creatively, for example by rotating members of staff on furlough, or moving them between work and furlough, furlough has the potential to help your business by covering core business activity now, and allowing you to gear up for the post-lockdown period.

HMRC's online application portal for JRS claims opened on 20 April 2020, with new information to be used to make a claim: the employer step by step guide bit.ly/2zllhjf and guidance bit.ly/3eFhSvK. This online calculator can be used to work out how much can be claimed bit.ly/2VolMl2. HMRC will check claims and has the right to audit them retrospectively.

We are happy to advise further, to support you through an application, or to submit your claim if authorised to act on your behalf for PAYE matters.



Furlough for company directors

As office holders, salaried company directors are eligible to be furloughed. Specific guidelines pertain here. Where a company, acting through its board of directors, considers that it is in compliance with the statutory duties of one, or more salaried directors, the board can decide to put them on furlough. Furlough arrangements should be formally adopted as a decision of the company, noted in the company records and communicated in writing to the director concerned.

Directors should not carry out normal commercial work for the company while on furlough. They may, however, carry out duties required to comply with their statutory responsibilities to the company.

These rules also apply to directors of personal service companies.

It is important to note, that as regards a director's own position, where the low salary, high dividend route has been taken, only the figure for fees and salary is relevant to JRS calculations.

Other help

- Other help available includes business rates holidays, and assistance targeting the retail, hospitality and leisure sectors. The detail varies depending on where in the UK your business is located. These websites give up to date detail:
- GOV.UK: Covid-19: guidance for employees, employers and businesses [bit.ly/2RETHUr](https://www.gov.uk/guidance/covid-19-guidance-for-employees-employers-and-businesses): and for much fuller information, see [bit.ly/2y4Eghm](https://www.gov.uk/guidance/covid-19-guidance-for-employees-employers-and-businesses)
- GOV.SCOT : Coronavirus advice for businesses in Scotland [bit.ly/3aRDBY6](https://www.gov.uk/guidance/coronavirus-advice-for-businesses-in-scotland)
- GOV.WALES: Business and employers: coronavirus [bit.ly/2Rs2ngK](https://www.gov.uk/guidance/business-and-employers-coronavirus)
- NIBBUSINESSINFO: Coronavirus updates: Support for your business [bit.ly/2RJlcfg](https://www.nibbusinessinfo.com/coronavirus-updates-support-for-your-business).

Company law: key areas of current concern

Profitability for many companies will be uncertain at the current time. This has consequences for

director-shareholders, for whom compliance with company law is particularly significant.

Directors' responsibilities

The requirement for directors to act in good faith is paramount. Company law requires directors to act in the way that is 'most likely to promote the success of the company for the benefit of its members as a whole'. It also requires regard to factors such as the likely consequences of a decision in the long term; the interests of employees; the fostering of business relationships with suppliers, customers and others; and the impact of company operations on the wider community. These are particularly relevant in the current economic climate. It is important to note that if there is any prospect of insolvency, the law requires directors to change priorities, with a focus on minimising potential loss to company creditors.

Dividends

General rules about directors' responsibilities also impact dividend procedures, in particular assessment of whether there are sufficient profits to make a distribution. It is very important for your company to adhere to the right procedures when declaring or paying dividends.

There are two main types of dividend: interim dividends and final dividends. Interim dividends can be decided on at any time in the financial year. They are usually approved by directors at a board meeting, and minuted. Minuting must be done at the time, not retrospectively. Final dividends are paid once a year, when annual accounts are prepared. They are usually recommended by directors and approved by shareholders in AGM.

Failure to use the correct procedure can render a dividend unlawful. Serious consequences can attach here, such as rendering directors liable to repay the dividend to the company. The issue is whether a recipient 'knows or has reasonable grounds to believe' that a distribution, or some part of it, is unlawful. Someone receiving the distribution knowingly is liable to repay it to the company. But if 'innocent' of that information, the liability does not attach. In a private company controlled by director-shareholders, HMRC is

likely to expect director knowledge of dividend status. In an insolvency situation, HMRC and the liquidator will be alert to the possibility of illegal dividends.

Companies Act 2006 sets out correct procedure, stipulating that a company can only make a distribution out of profits available for the purpose. This means accumulated realised profits not previously used, less accumulated losses not previously written off. Evidencing sufficient profits can be done by being able to justify your decision on the basis of what the Companies Act calls 'relevant accounts'. These are either the last annual accounts prepared in accordance with the Companies Act; or if those annual accounts show sufficient distributable profits don't exist, then more up to date 'interim accounts' justifying your decision.

For private companies, the exact format of interim accounts is not specified. But they must be sufficient for a reasonable judgement as to profits,



losses, assets and liabilities, provisions and share capital and reserves to be made. A good set of management accounts should provide this information, although some adjustments to

the figures may be needed. Directors should also review whether the company will still be solvent after the distribution is made, and that it will be able to pay its debts as they fall due. Monitoring cash flow position is key here - and doubly essential in current circumstances. The golden rule is: if, when you have done all these checks, there are not sufficient accumulated profits, don't pay a dividend. It could be unlawful.

Temporary Covid-19 procedures

Extension to filing deadline: From 25 March 2020, businesses can ask Companies House for a

three-month extension to file their accounts. This is intended to allow businesses to prioritise more urgent concerns. To do this, you must apply using a 'fast-tracked online system' bit.ly/2JTD6rm, citing Covid-19 as the reason for applying. The request should then be automatically granted. If you don't apply for an extension and accounts are filed late, an automatic penalty applies, although companies issued with a late filing penalty because of Covid-19 should have any appeal treated sympathetically.

Wrongful trading provisions: These rules are particularly important when companies are under financial stress. They mean that directors continuing to trade, when it should have been obvious to them that the company was insolvent, risk becoming personally liable for business debts. The government has temporarily suspended these rules retrospectively from 1 March 2020 for three months 'to give company directors greater confidence to use their best endeavours to continue to trade during this pandemic emergency'. Existing rules around fraudulent trading and director disqualification, however, remain. Overall, this is an area where great care is needed.

Other measures: Additional support to help businesses meet their legal responsibilities, giving greater flexibility around holding Annual General Meetings, for example, has also been announced. The Companies House website is worth monitoring for any further developments bit.ly/2VLQzqH.

How we can help

We appreciate that this is a time of unprecedented difficulty for clients. Please remember that we are on hand to help. We can advise on the latest government assistance for business, as well as management accounting, and ways to enhance business resilience. Please do not hesitate to get in touch.