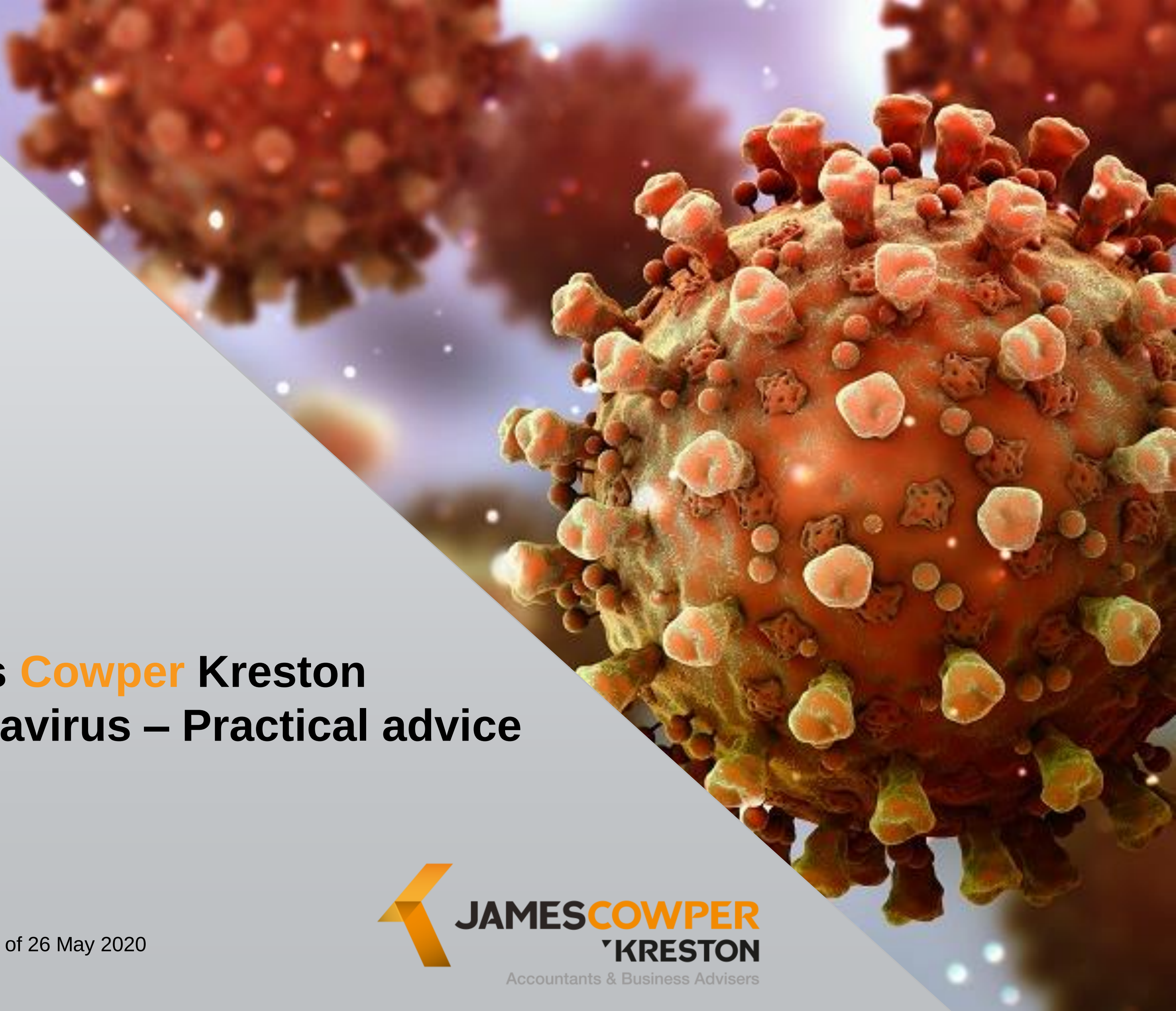

James Cowper Kreston
Coronavirus – Practical advice

Updated as of 26 May 2020

JAMESCOWPER KRESTON
Accountants & Business Advisers

Contents

Coronavirus Job Retention Scheme

Under the Coronavirus Job Retention Scheme, all UK employers are able to access support to continue paying their employees' and certain other eligible individuals and who would otherwise have been laid off during this crisis.

Any entity with a UK payroll can apply (including large or small businesses, charities, recruitment agencies and public authorities) provided they have a PAYE payroll scheme in operation on or before 19 March 2020, are enrolled for PAYE online and have a UK bank account.

Outline of the scheme

You will need to designate affected employees and other eligible individuals as 'furloughed workers' (i.e. granted a leave of absence) and to notify them of this change in writing. Changing the status of employees remains subject to existing employment law and consultation may be required.

The workers can be full-time or part-time and the scheme also extends to employees on agency contracts and those working on flexible or zero-hours contracts. The Government has provided guidance for, amongst others; apprentices, employees self-isolating (or otherwise sick), shielding employees, fixed term contracts and those with caring responsibilities. Click here to access this guidance: HMRC guidance.

The scheme will continue until the end of October 2020 but changes will be made from 1 August.

From the 1 March to 31 July :

- HMRC will reimburse 80% of furloughed workers wage costs, up to a cap of £2,500 per month. Examples of how this operates are included further on in this guidance.
- This reimbursement takes the form of a grant paid to the business; it is not a loan and does not need to be repaid. It is available for employees and other eligible workers on the payroll at 19 March 2020 and which were notified to HMRC on an RTI submission on or before that date.

Coronavirus Job Retention Scheme

Outline of the scheme (cont.)

- Furloughed workers cannot work for the employer during the period of furlough and the period of furlough must last for at least three weeks. It is not possible to include workers who are working on reduced hours or for reduced pay.

From 1 August to 31 October:

- Furloughed workers will continue to receive 80% of their current salary, up to £2,500, however employers will be asked to meet some of this cost.
- The Chancellor has announced that furloughed workers will be able to return to work part-time.
- Details of how costs will be shared between employers and the government have yet to be announced and are expected by the end of May.

Coronavirus Job Retention Scheme (cont.)

Application to limited company directors

- The Job Retention Scheme is potentially available to directors (or other office holders) PAYE payments but this will be subject to meeting the furlough requirements.
- HMRC has confirmed that furloughed directors may still carry out particular duties to fulfil their statutory obligations but that they should not do any work of a normal kind, for example to generate commercial revenues. Directors will likely need to take a pragmatic view depending on their specific circumstances.
- Shareholder directors of limited company’s risk falling between two schemes; namely the Job Retention Scheme and the Self-Employed Income Support Scheme (covered separately in this guidance).
- Shareholder directors are not technically self-employed and typically pay themselves a small amount in PAYE salary with the remainder drawn as dividends from the company. The PAYE amounts may qualify but there is no support for dividend income within either scheme.

Coronavirus Job Retention Scheme (cont.)

Eligible individuals who are not employees

- The grant can also be claimed for the following groups, provided they are paid via PAYE:
  - office holders (including company directors)
  - salaried members of Limited Liability Partnerships (LLPs)
  - agency workers (including those employed by umbrella companies)
  - Limb (b) workers
- Further information can be found at: HMRC guidance.

The maximum grant

- For each employee, the maximum grant will be calculated as the lower of:
  - 80% of ‘an employee’s regular wage’ and
  - £2,500 per month
- In addition, the grant will cover the associated employers’ national insurance contributions (NICs) on the above amount as well as the minimum automatic employer pension contributions on that wage. Fees, commissions and bonuses cannot be included.
- Taken together, the maximum monthly grant per employee is £2,804 (£2,500 + £245 of NICs + £59 pension).
- These rules are illustrated by two examples below.

Coronavirus Job Retention Scheme (cont.)

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Example 1

- Mr A is employed by X Ltd with an annual salary of £24,000, i.e. £2,000 per month. He has opted out of auto-enrolment.
- Each month, Mr A currently receives net pay of £1,655 which is after deducting PAYE of £191 and employee's NIC of £154. On this salary X Ltd pays employers' NIC of £177.
- The available grant is the lower of: 80% of £2,000 (£1,600), and £2,500 plus the Employer's NIC. Therefore X Ltd can claim a grant of £1,777 (£1,600 plus £177 NICs).
- The net amount of cash required by X Ltd to furlough Mr A if maintaining his existing salary is £400 per month (£2,000 + £177 - £1,777).

Example 2

- Mr B is employed by X Ltd with an annual salary of £42,000, i.e. £3,500 per month. He has opted out of auto-enrolment.
- Each month, Mr A currently receives net pay of £2,675 which is after deducting PAYE of £492 and employee's NIC of £333. On this salary X Ltd pays employers' NIC of £383.
- The available grant is the lower of: 80% of £3,500 (£2,800), and £2,500 plus the Employer's NIC. Therefore X Ltd can claim a grant of £2,745 (£2,500 plus £245 NICs).
- The net amount of cash required by X Ltd to furlough Mr A if maintaining his existing salary is £1,138 per month (£3,500 + £383 - £2,745).

Note: Examples sourced from ICAEW published guidance on 26 March.

Coronavirus Job Retention Scheme (cont.)

Claiming the grant

- Claims are made through a new online portal which opened on 20 April.
- The information you will need to claim is as follows:
  - Your Government Gateway user ID and password you got when you registered for PAYE online
  - your ePAYE reference number
  - the number of employees being furloughed
  - national insurance numbers for the employees being furloughed
  - payroll / employee number for the employees being furloughed (optional)
  - employer's name or employer self-assessment unique taxpayer reference or corporation tax unique taxpayer reference or company registration number
  - the claim period (start and end date)
  - amount claimed (per the minimum length of furloughing of 3 consecutive weeks)
  - your bank account number and sort code
  - your contact name and phone number
- For employers with under 100 furloughed staff, details of each employee they are claiming for will be requested directly. Above 100 furloughed staff, a file upload will be requested with the information and HMRC will accept the following file types: .xls .xlsx .csv .ods.
- The scheme is backdated to 1 March and will operate until at least the end of October 2020. HMRC retains the right to retrospectively audit all aspects of claims made and records should be retained for at least 5 years.
- Employers will need to continue to pay affected employees through the payroll and report payments to HMRC in the ordinary way with the deduction of PAYE. The grant will be paid via BACS within 6 working days.
- The link to the make a claim is contained in HMRC's guidance here.

Coronavirus Job Retention Scheme (cont.)

Practical questions and answers

Q. Do I actually have to "mothball" the staff to apply or can they continue to work part-time?

- Employees cannot work part-time and must be furloughed for a minimum of three weeks. When deciding who to furlough employers need to be mindful of equality and discrimination laws. Employees on unpaid leave cannot be furloughed unless they were placed on unpaid leave after 28 February.

Q. Do I have to pay the additional 20%?

- The guidance to employees says that "your employer may choose to pay the difference between this payment and your salary, but does not have to".

- However it is important to appreciate that this is subject to existing employment law and, depending on the employment contract, may be subject to negotiation. Some form of consultation is advisable although in practice most employees will accept a 20% reduction if the alternative is being laid off.

Q. My employees' pay varies month to month, what can I claim?

- The general rule is that if the employee has been employed for a full twelve months prior to the claim, you can claim for the higher of either: the same month's earnings from the previous year, or the average monthly earnings from the 2019/20 tax year. Further provisions exist for employers who have been employed for less than a year.

Q. Is the grant taxable income of my business?

- Grants received are taxable business income but in practice will simply off set deductible revenue employment costs.

Self-Employed Income Support Scheme

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The Chancellor has announced a new scheme to help just under 4 million self-employed individuals affected by the coronavirus outbreak. The financial help will be up to £2,500 a month in the form of a government grant, initially over a three month period, although the Treasury estimate the average monthly pay-out across all the applicable self-employed will be £940.

Outline of the scheme

- Eligible self-employed individuals will receive a grant worth 80% of their average monthly profits over the last three years – but the maximum pay-out will be £2,500 per month. For those who have been trading for less than three years the averaging is undertaken over the period of trading.

- If applicable, the grant will be back dated to 1 March 2020 and will be paid in a lump sum. The scheme opened for applications (online) on 13 May with the first grants expected to be paid out by 25 May 2020 (typically payments are expected to be made within six days of making a claim).

- To be eligible for the scheme an individual has to be self-employed and have submitted a tax return for the 2018/19 tax year, have continued to trade into the tax year 2019/20, intend to continue to trade in to the tax year 2020/21 and be trading when the application is made (or would have been trading but from the coronavirus outbreak). This means that if someone only started trading during the current tax year they do not qualify for the relief. The Chancellor granted a concession for those who missed the 2018/19 tax return deadline of 31 January 2020 by allowing them a further four weeks from 26th of March 2020 to submit their return in order to show their eligibility, i.e. by 23 April 2020.

- No grants are available for the self-employed whose trading profits exceed £50,000 p.a. or for those who do not earn the majority of their income from self-employment. Neither is it available to small traders who operate their business through a small company and pay themselves in dividends.

Self-Employed Income Support Scheme (cont.)

Outline of the scheme (cont.)

- HMRC intend to contact those who are eligible directly by mid-May, with a link to complete an online form, upon receipt of which grants will be paid directly into a claimant's bank account.
- As part of the claim process it is expected that the individual will have to declare that they have lost money because of COVID-19, however what form this will take and what proof will be required is unclear. It would also appear that, unlike the similar furloughing scheme for the employed, grants can be claimed while simultaneously continuing to trade.
- The grants will be taxable so recipients will need to declare it on their 2020-2021 tax return.
- Noted that various other support measures available including the Bounce Back Loan Scheme, Coronavirus Business Interruption Loan Scheme, the deferral of self-assessment tax payments from July 2020 to January 2021 and access to Universal Credit are covered elsewhere in this guidance.
- To make a claim you will need your:
  - Self-assessment Unique Tax Taxpayer Reference (UTR)
  - National Insurance Number
  - Government Gateway user ID and password
  - UK bank account details

To claim a grant through the Self-Employment Income Support Scheme click here

Deferral of Income Tax payments

Income Tax payments on account

- For Income Tax Self-Assessment, payments on account due on the 31 July 2020 will be deferred until the 31 January 2021.
- This will be automatic and no deferral application is required. Nevertheless the deferral is optional and HMRC are encouraging those who can pay their second payment on account on the normal due date to do so.
- No penalties or interest for late payment will be charged during the deferral period.
- The scaled up Time to Pay Arrangements (covered separately in this guide) are also potentially available for Income Tax.

I am a company director in receipt of dividends – does the deferral apply?

- HMRC has since confirmed that you do not need to be self-employed for the deferment and therefore we expect this offer to be open to all. In addition, a claim to reduce payments on account may still be appropriate, for example to recover part of a January 2020 payment on account.

I am a landlord in receipt of property rental income – does the deferral apply?

- The above answer applies equally to landlords in receipt of property rental income.

Suspension of VAT

The UK government announced on the 20 March that VAT return payments are suspended for all registered businesses until the end of June 2020

- Businesses on quarterly VAT returns who are due to pay their February 2020 return by 7 April or their March 2020 return by 7 May or their April 2020 return by 7 June do not need to pay. If a business submits monthly returns and the February, March or April 2020 return is a payment, again no payment has to be made
- This deferral applies also to those businesses who make monthly Payments on Account
- There is no need to contact HMRC to request this deferral, as it a blanket policy
- The unpaid VAT from this quarterly deferral will need to be paid to HMRC no later than the end of the financial year, i.e. by March 2021
- If businesses pay VAT by direct debit, they should cancel the authorisation as once VAT is paid to HMRC they cannot repay it
- Although it was not specifically mentioned by the Chancellor, the non-payment of VAT will not count as a default.

Coronavirus Business Interruption Loans Scheme

KEY FEATURES

Up to £5m facility
The maximum value of a facility provided under the scheme will be £5m, available on repayment terms of up to six years.

80% guarantee
The scheme provides the lender with a government-backed, partial guarantee (80%) against the outstanding facility balance, subject to an overall cap per lender.

No guarantee fee for SMEs to access the scheme
No fee for smaller businesses. Lenders will pay a fee to access the scheme.

Interest and fees paid by Government for 12 months
The Government will make a Business Interruption Payment to cover the first 12 months of interest payments and any lender-levied fees, so smaller businesses will benefit from no upfront costs and lower initial repayments.

Finance terms
Finance terms are up to six years for term loans and asset finance facilities. For overdrafts and invoice finance facilities, terms will be up to three years.

Security
At the discretion of the lender, the scheme may be used for unsecured lending for facilities of £250,000 and under. For facilities above £250,000, the lender must establish a lack or absence of security prior to businesses using CBILS. If the lender can offer finance on normal commercial terms without the need to make use of the scheme, they will do so.

The borrower always remains 100% liable for the debt. Note that lenders will not take personal guarantees for loans up to £250,000. Personal guarantees may be required above this amount but cannot include a Principle Private Residence and can only apply to the 20% which is not covered by the guarantee.

Coronavirus Business Interruption Loans Scheme (cont.)

Am I eligible for the Scheme?

Smaller businesses from all sectors can apply for the full amount of the facility. To be eligible for a facility under CBILS, an SME must:

- Be UK-based in its business activity, with annual turnover of no more than £45m
- Have a borrowing proposal which, were it not for the current pandemic, would be considered viable by the lender, and for which the lender believes the provision of finance will enable the business to trade out of any short-to-medium term difficulty.

Please note: If the lender can offer finance on normal commercial terms without the need to make use of the scheme, they will do so.

How do I access the Scheme?

CBILS is available through the British Business Bank's 40+ accredited lenders, which are listed on the British Business Bank website.

In the first instance, businesses should approach their own provider – ideally via the lender's website. They may also consider approaching other lenders if they are unable to access the finance they need alternatively should you require our assistance, in the first instance, please email: AMataczynski@jamescowper.co.uk

Decision-making on whether you are eligible for CBILS is fully delegated to the 40+ accredited CBILS lenders. These lenders range from high-street banks, to challenger banks, asset-based lenders and smaller specialist local lenders.

Am I eligible for finance under CBILS?

The scheme is designed to support smaller businesses (SMEs) who don't meet a lender's normal lending requirements for a fully commercial loan or other facility, but who are considered viable in the longer-term.

To be eligible for a facility under CIBLS, your business must:

- Be UK based in its business activity with annual turnover or no more than £45m
- Have a borrowing proposal which, were it not for the COVID-19 pandemic, would be considered viable by the lender, and for which the lender believes the provision of finance will enable your business to trade out of any short-to-medium term difficulty
- Smaller businesses from any sector can apply for the full amount of the facility

Coronavirus Business Interruption Loans Scheme (cont.)

Some Accredited lenders

ABN·AMRO Commercial Finance	afl arkle finance limited	ART BUSINESS LOANS	askif inclusive finance	DSL BUSINESS FINANCE	ENTERPRISE ANSWERS	FINANCE FOR ENTERPRISE	first enterprise
Bank of Ireland UK	BANK OF SCOTLAND	BARCLAYS	BCRS BUSINESS LOANS	Business Finance	genesis	Haydock Finance	Hitachi Capital (UK) PLC
bef Business Enterprise Fund	CALVERTON FINANCE	CHAMBER ACORN FUND (HUMBER)	We care about here	HSBC	Let'sDoBusiness Group	LLOYDS BANK	msif...
compass BUSINESS FINANCE	COUNTY FINANCE GROUP LIMITED	FIND OUT MORE	Danske Bank	METRO BANK	NatWest	Newable	Robert Owen Community Banking

For further assistance or information regarding CBILS please contact your usual James Cowper Kreston contact or email AMataczynski@jamescowper.co.uk who will direct your enquiry to the relevant member of our Corporate Finance team .

Bounce Back Loan scheme

Britain's small businesses are able to apply for quick and easy-to access loans of up to £50,000. The Bounce Back Loan scheme is intended to help small and medium-sized businesses to borrow between £2,000 and £50,000. As of 12 May more than 260,000 loans have been approved under the scheme with a cumulative value of £8.4bn.

The government will guarantee 100% of the loan and there are no fees or interest to pay for the first 12 months. Loan terms will be up to 6 years. No repayments will be due during the first 12 months. The government will work with lenders to agree a low rate of interest for the remaining period of the loan.

The scheme will be delivered through a network of accredited lenders and be applied for online here.

You can apply for a loan if your business:

- is based in the UK
- has been negatively affected by coronavirus
- was not an 'undertaking in difficulty' on 31 December 2019

The following businesses are not eligible to apply:

- banks, insurers and reinsurers (but not insurance brokers)
- public-sector bodies
- further-education establishments, if they are grant-funded
- state-funded primary and secondary schools

You also cannot apply if you are already claiming under the Coronavirus Business Interruption Loan Scheme but if you've already received a loan of up to £50,000 under CBILS and would like to transfer it into the Bounce Back Loan scheme, you can arrange this with your lender until 4 November 2020.

Help for R&D and Start-up Companies

Announced on 20th April was a £1.25bn Government scheme for business assistance in wake of the Covid-19 crisis. Unlike previous schemes, this one is specifically designed to focus on companies driving innovation – including those that are not yet profit generating.

The package includes a £500 million investment fund for high growth companies impacted by the crisis, made up of funding from government and the private sector. SMEs focusing on research and development will also benefit from £750million of grants and loans.

Delivered in partnership with the British Business Bank and launching in May the £500million Future Fund will provide companies with loans of between £125,000 and £5million from the government with private investors at least matching the government's commitment. These loans would be convertible to equity at the company's next qualifying round of investment or at the end of the loan period if it has not been repaid by then.

To be eligible a company must have raised £250,000 in equity investment from private investors in the previous five years.

The £750million of targeted support for the most R&D intensive companies will be available through Innovate's grants and loan scheme. Under this Innovate will accelerate up to £200 million of grant and loan payments for its existing Innovate customers on an opt-in basis. An extra £550million will also be made available to increase support to existing customers and £175,000 of support will be offered to around 1,200 firms not currently in receipt of Innovate funding.

Whilst this all looks very helpful in terms of providing much needed support to our technology and innovation businesses, the devil is very much in the detail which is to be announced in due course, and in particular in the timescale within which this support is able to be provided.

COVID-19 corporate financing facility

- To support larger firms, the Bank of England has announced a new COVID-19 Corporate Financing Facility to provide a quick and cost-effective way to raise working capital via the purchase of short-term debt.
- This will support companies which are fundamentally strong, but have been affected by a short-term funding squeeze, enabling them to continue financing their short-term liabilities. It will also support corporate finance markets overall and ease the supply of credit to all firms.
- The Government will very soon be announcing further information on this facility.

Time to Pay ("TTP") Arrangements

HMRC now has up to 2,000 staff available on a phone helpline to assist businesses or the self-employed who are concerned about meeting their tax liabilities due to coronavirus.

These staff are available to discuss your specific circumstances to explore:

- allowing you to defer payment of VAT, PAYE, NIC and other taxes under a TTP Arrangement
- suspending debt collection proceedings
- cancelling penalties and interest where you have administrative difficulties contacting or paying HMRC immediately

Our specialists are available to assist you in putting such measures in place. Some practical advice:

- The timing of the request to HMRC should ideally be once a tax liability has been established but before it falls due for payment.
- The default response from HMRC to cash flow problems arising from coronavirus appears to be to allow two months deferral of tax payments due.
- HMRC would prefer an upfront payment, as part of a TTP Arrangement, but seemingly understand if this is not possible or desired by the taxpayer.
- If a two month deferral is granted, HMRC will contact the business after one month to ask either for full payment in one months' time or a payment plan which commences one month later. Further deferral may be possible depending on specific circumstances.
- If the business has a direct debit arrangement for tax payments with HMRC, it should be cancelled (after the deferral is agreed) as HMRC are unable to refund payments received.

Further information can be found at: https://www.gov.uk/difficulties-paying-hmrc and the HMRC Coronavirus helpline number is 0800 024 1222.

Extension to accounts filing deadlines

A joint initiative between the government and Companies House means that businesses will from today (25 March) be able to apply for an additional 3 months to file accounts.

The move is designed to help companies avoid penalties as they deal with the impact of COVID-19.

- As part of the agreed measures, those citing issues around COVID-19 will be automatically and immediately granted an extension
- Applications can be made through a fast-tracked online system which will take just 15 minutes to complete
- Extensions must be applied for before the filing deadline https://www.gov.uk/guidance/apply-for-more-time-to-file-your-companys-accounts

Further details of the announcement can be found at https://www.gov.uk/government/news/companies-to-receive-3-month-extension-period-to-file-accounts-during-covid-19

Other Government measures

Business Rates Holidays and cash grants

- No Business Rates are payable for the 2020-2021 tax year for any business in the retail, hospitality or leisure sectors.
- In those sectors, if your rateable value is between £15K and £51k, you'll also receive a cash grant of up to £25,000 per property.
- Any business which gets small business rates relief, including those in the retail, hospitality or leisure sectors, will receive a cash grant of £10,000 (increased from £3,000 announced in the 11 March Budget).
- The rates holiday and cash grants will be administered by local authorities and should be delivered automatically, without businesses needing to claim.

Statutory Sick Pay

- If you're a director of a limited company with less than 250 employees, you can pay yourself two weeks of SSP if you need to self-isolate subject to meeting the minimum payroll requirement for SSP.
- The government will refund £94 per week, maximum £188, to your company.
- It will also refund SSP for staff of businesses with less than 250 employees for up to two weeks.

Mortgage and rent holiday

- Mortgage borrowers can apply for a three-month payment holiday. Both residential and buy-to-let mortgages are eligible. Borrowers will still owe the amounts that they don't pay as a result of the payment holiday and interest will continue to be charged.
- Tenants can apply for a three-month payment holiday from their landlord. No one can be evicted from their home or have their home repossessed over the next three months.

For more information on the above click: here

Financial Forecasting

What urgent financial matters should I attend to now?

- Revising cash flow forecasts
- Revising budgets

If you need help with this we have a highly skilled team that can assist you. Please ask your normal contact for assistance.

What assumptions should I make when revising financial forecasts?

- This will largely depend on which sector you are in and how badly affected that sector is impacted. Remember it not just your clients to think about but also who are their clients
- As a general rule you should be mindful that customers/ clients may pay late or not at all
- Following the announcement of the Coronavirus Job Retention Scheme on Friday 20 March businesses may now need to make difficult choices between, for example, redundancies, furloughed staff and temporary pay cuts

Finance Options

Where can I get finance?

- Your existing finance providers may be able to extend further lines of credit
- It is unlikely that a new financier will want to extend additional credit to businesses at this time however equity funds will still want to deploy money into the right sectors – Please talk to our Corporate Finance team if this might apply to you
- It also may be possible to refinance specific assets such as plant and equipment
- If you are considering injecting additional personal funding into your business please talk to our tax team about efficient ways to do so

Business Protection Measures

What measures can I take to protect my business?

- Continue to communicate with customers and clients - try to understand their plans during this difficult time
- Let customers / clients know how they can contact you
- Review major items of expenditure and ask whether expenditure is necessary at all or could be delayed
- If you are considering staff rationalisation please take advice as the cost of getting this wrong can be considerable and is normally avoidable by following proper procedure.
- Consider whether capital expenditure should be put on hold
- Many firms are looking at recruitment freezes or asking staff to reduce hours (this was done successfully in the 2008/9 financial crisis)

Business Protection Measures (cont.)

Will insurance help me?

- Business interruption cover may help in certain circumstances
- Discuss with your insurers whether you can make a claim
- Credit insurance may pay if you suffer a bad debt but this will usually require a customer / client to enter into a formal insolvency procedure.
- It is unlikely that you will now be able to obtain additional insurance cover for business interruption or credit insurance

Business Protection Measures (cont.)

Credit to your clients

- Be careful about the level of credit that you extend to customers / clients and if at all possible either get payment in advance or on delivery
- You may seek personal guarantees from the directors of customer / client companies but be aware that if these are freely given it may be because the director has little personal assets to lose
- Review the basis on which you supply goods to make sure that any retention of title clause is valid and that you are following the right steps in terms of documentation and procedure so that in the event that you need to rely on the terms that you can prove that the terms were communicated to the customer/client in advance of the supply and that you can identify the goods.
- In the event that you need to rely of a retention of title clause you must alert the insolvency practitioner dealing with the customer at the earliest opportunity and insist on identifying the goods that you supplied. If you need help in this please contact the business recovery and insolvency team at James Cowper Kreston

Business Protection Measures (cont.)

If my business fails how can I protect my family?

- If you operate through a limited company if your company fails you will not be asked to put in additional funds unless you have either signed a personal guarantee or your conduct as a director has fallen short of what can reasonably be expected.
- It is not illegal to be a director of an insolvent company but the directors do open themselves up to potential pitfalls if they do not manage the risk appropriately.
- Whilst trading an insolvent entity the directors’ focus should change from that of creating shareholder wealth to protecting the position for creditors.
- The main areas of risk that directors face on the failure of an entity are claims for:
    - wrongful trading;
    - Preferences;
    - transactions at an undervalue;
    - fraudulent trading; and
    - misfeasance.

Taking advice from an Insolvency Practitioner (we have four available to you) can protect you from the perils of claims against directors (an possible disqualification) but you must take this advice early and follow the advice given.

Corporate Insolvency and Governance Bill (the Bill)

The Government are introducing a number of measures to help failing businesses

A new bill, the Corporate Insolvency and Governance Bill (the Bill) is being rushed through parliament and it is aimed at helping businesses survive in the face of the current Covid 19 crisis. The main measures are summarised below:

Suspension of statutory demands and winding-up petitions

Creditors cannot present a petition for the compulsory winding up of company between 1 March 2020 and 30 June 2020 unless they can demonstrate that Covid 19 has <u>not</u> had a detrimental effect on the business that owes the money. Statutory demands issued during this period will also be ineffective.

Suspension of wrongful trading provisions

It is recognised that in order to give directors the confidence to continue trading in these unprecedented times, that they should be given space to try to rescue a company that has been adversely affected by Covid 19 without the risk of potential personal liability arising from a wrongful trading claim. If a company fails and an insolvency practitioner (IP) is appointed the IP will not be able to bring a claim for wrongful trading against the directors for acts or omissions occurring between 1 March 2020 and 30 June 2020. In normal circumstances directors may be asked to financially contribute if it can be shown that at a point in time they knew or ought to have known that there was no reasonable prospect of the company avoiding an insolvent liquidation/administration but they continued to trade to the detriment of creditors.

Corporate Insolvency and Governance Bill (the Bill) (cont.)

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Covid 19 moratorium for companies

A new moratorium, free from creditor action, is being introduced to provide protection to companies impacted by Covid 19. Companies will be able take the benefit of the breathing space that the moratorium provides initially for 20 business day's protection (extendable to up to 40 business days with approval of the court) in order to formulate survival plans. Survival plans might include new investment or restructuring. In order to do so, the company will need to appoint an insolvency practitioner, who acts as a monitor, the monitor will assess the situation and if s/he forms the view that 'it is likely that a moratorium for the company would result in the rescue of the company as a going concern' then the moratorium will be granted. During the moratorium period the directors will remain in control (there will be certain restrictions) and the monitor will oversee the operation and will be required to approve certain transactions such as the granting of new security or the sale of non-trading assets.

Whilst in principal this appears to be a good idea, similar measures are already available for Company Voluntary Arrangements (CVAs) but are rarely used. This is mainly due to onerous obligations on the nominee surrounding the financial performance of the company during the moratorium period, meaning that there are very limited circumstances in which nominees are prepared to oversee such moratoriums.   It remains to be seen if and in what circumstances the new moratorium will be used.

Corporate Insolvency and Governance Bill (the Bill) (cont.)

Termination clauses

The Bill also introduces a permanent change to the use of termination clauses in supply contracts. Companies in an insolvency or restructuring procedure or that have obtained a moratorium, will be able to require the company's suppliers to continue to supply and as such suppliers will not be able to rely on contractual terms to stop or vary the contract terms with the company. However, the company will be required to pay for any supplies made once it is in the insolvency process, and typically we would expect this to be on a cash on delivery basis, but is not required to pay outstanding amounts due for past supplies while it is arranging its rescue plan. Initially the requirement to continue to supply will not apply to small companies. We see this as particularly useful for companies implementing a CVA procedure but of less benefit in an administration where administrators rarely encounter difficulties in continued supply.

Restructuring

The Bill introduces a new restructuring plan for companies in financial difficulty. It is designed to allow struggling companies, or their creditors or members, to propose a new restructuring plan enabling for example; complex debt arrangements to be restructured and will support the injection of new rescue finance. The major benefit is that it will allow for a cross-class cramdown, forcing dissenting classes of creditors to be bound by the plan. It will need to be sanctioned by the court who will consider whether it is as fair and equitable, and that those dissenting creditors would be no worse off than if the company entered an alternative insolvency procedure.

This is similar to the existing scheme of arrangement, which is a rarely used procedure. It remains to be seen if the process will be more popular.

Insolvency

What is the definition of insolvency?

- There are two tests for insolvency and if either test is met a company can be described as insolvent:
  - The cash flow test - can a company pay its liabilities as they fall due (taking into consideration perspective and contingent liabilities), and
  - The balance sheet test - are the level of a company's liabilities greater than the value of its assets

But do remember per the point above it is not illegal for directors to allow an insolvent company to continue to trade but they may face additional personal risks in doing so which can be mitigated with the right advice.

Please do speak to one of our business restructuring & insolvency team for that advice.

Contact us

If you would like to discuss any of the matters raised in this document, in the first instance please contact:

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