**COVID-19 Smaller Company Directors & Shareholders**

COVID-19: Company Directors & Shareholders. Many small companies are run by just one or two directors and have no other employees. What government financial support is available to director/shareholders during the coronavirus crisis?

* A director or company officer is an employee for PAYE purposes.
* A director cannot claim the COVID-19 Grant for the self-employed by virtue of holding the office of a director.
* It is possible for a company to furlough a director under the COVID-19 Job Retention Scheme
* There are potential issues for small companies to consider.
* The government has temporarily suspended the wrongful trading in insolvency rules in order to allow companies to have a breathing space during the virus crisis.

If the director’s company is adversely affected by COVID-19, the director has the following options, depending on the circumstances:

**Potential insolvency**

* The government has announced that it will temporarily suspend the wrongful trading rules, backdated to 1 March 2020.
* Directors should though be mindful of their company's prospects and take appropriate advice where needed.

**Furloughing**

Furloughing for normally employee type duties:

* A director who was on the payroll and engaged under an existing written or verbal employment contract on 28 February 2020 may be furloughed.

Can you furlough a sole director?

* In deciding whether to furlough a director in respect of their duties as a company officer, it is assumed that the director will not be furloughed in respect of their statutory duties. This is because a company cannot operate without its director and all directors have ongoing fiduciary duties to their companies.
* Most companies will need to have someone on hand, to handle on-going administration such as post, bookkeeping, tax filings and banking. These kinds of duties can be performed by a director.
* A company can go into a ‘COVID-19 hibernation’ meaning that the director would have no day-to-day employment type duties during that period but we are uneasy recommending that a sole director is laid off completely as they still have to undertake their statutory duties. In such cases part-furloughing is possible: duties as an employee would be furloughed. Statutory duties would not be furloughed. In most cases, statutory duties are not onerous. In terms of contracts, this would be evidenced by two contracts: a service contract and an employment contract.
* HMRC states that "If an employee is working, but on reduced hours, or for reduced pay, they will not be eligible for this scheme and you will have to continue paying the employee through your payroll and pay their salary subject to the terms of the employment contract you agreed".
* It is for the employer to agree the terms of any modification to an employment contract and for the directors to act in the best interests of the company. This may include furloughing any member of staff.

Salary or dividends?

* Employers must have been paying a salary through a payroll to be eligible for an Employee Retention grant.
* Payments made to employees when furloughed will be calculated based on average monthly payrolled earnings for the 2019/20 tax year.
* It needs to be remembered that a furloughed employee is not allowed to work for the employer during the furlough period. You may undertake training as a furloughed employee.
* There is no scheme in place for the government to provide financial support to shareholders where the amount of their dividend is affected by the COVID-19 crisis.
  + If a company can no longer afford to pay dividends, it may be insolvent, directors should take appropriate advice.
  + If the company decides to change the terms of the contract in order to pay a salary instead of a dividend, this must be agreed contractually between the company and its director. As suggested above, we would normally expect to see a service contact which details the statutory duties of a director and an employment contract which covers duties as an employee.