EXCLUDED

The Self-Employed Excluded from the Self-Employed Income Support Scheme

The Self-Employment Income Support Scheme (SEISS) was announced on 26 March 2020 in parallel to the Coronavirus Job Retention Scheme (CJRS), with support at 80% of trading profits. HMRC identified 3.4 million who were eligible for SEISS[1], based on information held from their self-assessment returns for tax years 2016-2017, 2017-2018 and 2018-2019.

However, hard edges to the eligibility criteria have left 1.6 million self-employed workers outside of the scope of the scheme through no fault of their own, with three key exclusions and one further scenario as follows:

- requirement of a minimum of 50% of trading profits from self-employment
- newly self-employed who had not submitted a 2019-2020 tax return could not benefit from the scheme
- total trading profit had to be £50,000 or less
- businesses with low to no profit over the 3-year profit calculation period

The first two criteria often go hand in hand. Thus, many have found themselves excluded on the basis of both criteria.

This paper considers the exclusion relating to the newly self-employed.

ExcludedUK has a wealth of evidence from case studies illustrating how those who have fallen foul of the SEISS eligibility criteria have been plunged into debt and for many poverty. This is also a group of people who often have never found themselves in such a position, having never relied on benefits before.

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[1] www.gov.uk/government/statistics/self-employment-income-support-scheme-statistics-august-2020/self-employment-income-support-scheme-statistics-august-2020

As financial expert Martin Lewis (Money Saving Expert) pointed out in the Treasury Committee meeting of 9 December 2020:

"The one [category] that we need to focus on are the people who were able to support themselves before, who were perfectly financially independent without mainstream support from the State, who were in businesses and sectors like travel, events or entertainment or hospitality and who solely because of this pandemic are not able to support themselves, and my concern is it would be short-sighted of the State to provide them with no support at all so they continue to languish and they move into that category of people that will permanently be in financial trouble and will permanently need to be a burden on the State. And by not providing short-term support to get them through to the end of this pandemic, and that includes limited company directors, it includes the newly self-employed, it includes the other excluded categories, all of whom were in viable work, to use the Chancellor's term, is a short-sighted mistake that will cost us more in the long run. We need to get people over this hump, and then back to their jobs, back working, back paying taxes."[2]

According to accountants QuickBooks, 3 million people faced having to pay tax bills double the normal size by the deadline of 31 January 2021 "as bills already deferred from last year begin to pile up"[3].

The Resolution Foundation's report "Long Covid in the labour market" of 18 February 2021 states that according to their survey 3 in 10 self-employed workers equivalent to 1.5 million people "said that while their profits had fallen as a result of Covid-19, they had not been eligible to receive a grant through the scheme. This exclusion could have longer-term consequences, too, as those who were not eligible for the SEISS were two-and-a-half times more likely to say they planned to leave self-employment than those who received a grant"[4].

For those self-employed people who have been excluded from SEISS and recently submitting their tax returns it has been a bitter pill to swallow, having to pay tax on their pre-Covid incomes from their decimated 2020 income. ExcludedUK called for tax to be waived for those affected as a gesture that would offer some help to these people. However, there was no response to these calls by the Treasury. Moreover, for those who took advantage of the tax deferral for payments due 31 July 2020, the financial strain at this time has been all the harsher.

For those who have taken out Bounce Back Loans, reminders are starting to be sent out informing people that their repayments are due to commence in the new few months. Loans and deferrals were never the solution.

[2] https://youtu.be/ZpMUD9TPSXI
[3] www.telegraph.co.uk/tax/return/taxpayers-owe-4bn-hmrc-thousands-struggle-pay-bills/
[4] www.resolutionfoundation.org/app/uploads/2021/02/Long-covid-in-the-labour-market.pdf

The Treasury Committee report of 15 February 2021 further highlighted the gaps in support first identified in its report of 15 June 2020, emphasising its recommendations to the Treasury to amend the eligibility criteria so as not to exclude these three groups[5]. ExcludedUK full supports these recommendations and urges the Treasury to adopt these recommendations.

The Newly Self-Employed Excluded from the Self-Employed Income Support Scheme

Overview

The newly self-employed have been excluded from the Self-Employment Income Support Scheme (SEISS) on the basis of not having submitted a 2018-2019 tax return and therefore not having the records that the Government required in order to prove their case for support. In the majority of cases, they would have been included had the 2019-2020 tax return been considered.

They may also have been excluded on the basis of submitting a 2018-2019 tax return in which self-employed trading profits makes up less than half of their income – the '50% rule'. Thus, due to the nature of new businesses and short-term contract roles, there is an overlap for many as under the 50% rule and PAYE Freelancers.

Martin Lewis (Money Saving Expert) referred to this overlap with the '50% rule' at the Treasury Committee hearing of 9 December 2020 where he stated that only those who set up in business before October 2018 are effectively by the scheme covered, essentially excluding those who set up their business in the last previous two years (now approaching two and half years).

This completely excluded the newly self-employed from the start of the scheme. Anyone who began self-employment in tax year 2019-2020 could not apply.

How many are affected?

The Office for National Statistics (ONS) Annual Population Survey estimated there to be 150,000 newly self-employed from April to December 2019[6]. According to the National Audit Office, HMRC estimated this figure to be 200,000 over the 12 month period April 2019-March 2020[7].

It is important to recognise that as per Martin Lewis' comment above, those who went self-employed after October 2018 will also have most likely been excluded, but they may not be counted in this figure. There will be overlap with the 50% rule, as with those excluded due to be being in loss as per the fourth example below.

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[5] https://committees.parliament.uk/publications/4703/documents/47210/default/

[6] www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/articles/coronavirusandselfemploymentintheuk/2020-04-24

[7] www.nao.org.uk/report/implementing-employment-support-schemes-in-response-to-the-covid-19-pandemic/

Examples:

1. Someone who left PAYE employment and set up a new business after September 2018. 2018-2019 tax return therefore showed 6 months of PAYE employment and 6 months of self-employment, with PAYE income slightly higher.

2. Someone who combined PAYE employment and self-employment with less than 50% trading profits from self-employment, but then went full-time self-employed after October 2018 and therefore did not have enough profit or was in loss as per their 2018-2019 tax return.

3. An individual who changed tax payment status – ie. from PAYE freelancer to sole trader, although in the same role but taxed in a different way. This is particularly common in the film and TV industry as HMRC guidelines on how an individual is paid also considers the length of a contract.

4. Someone who set up as a sole trader as a brand new business in January 2018 and made a loss in the first year.

Case study examples:

- A make-up artist/beauty therapist who was self-employed for a number of years, sadly lost her husband suddenly in 2018. She received bereavement payments for a little over a year and took his pension pay-out late February 2019 to invest further in her business, with two children to support. She was excluded by the 50% rule with these payments being counted as non-trading profits, which turned out to be more than 50% of trading profits, whilst also newly self-employed. Had she taken the pension pay-out five weeks later she would not have been excluded from support

- A waste management specialist, single in his late 50s, made redundant in early 2019, was only weeks away from starting a new job on a campsite at the time of lockdown in March 2020. He lost this job overnight, leaving him homeless needing to live in a motorhome throughout lockdown. He was able to claim £64 per week Job Seekers Allowance and was allowed to camp free of charge on one of the sites of what would have been his new employer throughout lockdown. He then set himself up as a carpenter, but soon found there was very little work. He was unable to claim Universal Credit until the autumn due to savings which he lived off until they were depleted. He now lives between a motorhome and a narrowboat, claiming UC with no savings nor job

- A pub manager in her late 50s, self-employed since July 2018 receives a small teacher's pension of ~£600/month, hence she is not eligible for Universal Credit. Classed as Extremely Clinically Vulnerable due to recovering from cancer, she cannot look for other work as she is shielding. She cannot claim sick pay since she worked throughout her illness. She was not eligible for any business grants from the local council since the company she works for claimed all available grants

- A plumber/bathroom fitter who was previously in a PAYE role left to return to self-employment in late 2019, and therefore did not have a 2018-2019 tax return. With the first lockdown, he was unable to work due having to shield his son. He has since had to survive on Universal Credit with a Bounce Bank Loan of £5k that lasted a month in paying bills. His ability to work has been drastically affected by childcare needs, while his work has been hugely impacted by the pandemic

The newly self-employed for the most part could not access Bounce Back Loans as most do not trade through a business account, but rather a current account. A business account is not a requirement for sole traders. The options were to set up a feeder account or a business account and apply. This meant that many were waiting for up to 4 months for the funds rather than the 48 hours for limited companies. Some were accepted, some were not, often with little or no feedback as to banks' reasons for rejecting applications. Individual credit checks were also applied.

Potential Solutions

1. Allow 2019-2020 tax returns for profits calculation for future SEISS support

Taking 2019-2020 tax returns into account should be the case for any further extension to SEISS and there can therefore be no logical reason as to why the newly self-employed cannot be included in any extension of SEISS. The Treasury Committee stated in their recent report of 15 February 2021, "We strongly urge the Treasury to use the data in the tax returns for 2019-20 to help the newly self-employed who missed out from previous rounds of support."[8]

Given that 2019-2020 tax returns will have been filed by 28 February 2021, it is totally feasible and straightforward for these to be taken into account for any extension of SEISS.

2. Backdate payments

While taking 2019-2020 tax returns into account going forwards should be straightforward to implement, the newly self-employed should equally receive support for previous tranches of SEISS which would be validated by 2019-2020 tax returns.

Conclusion

New businesses have been unfairly excluded from SEISS thus far, and this has often also been tied into other exclusions of the 50% rule whereby moving to self-employment is often done gradually or in tandem with PAYE employment, and PAYE freelancers who may switch between tax statuses, and it must be said, not out of choice.

Taking 2019-2020 tax returns into accounts will be extremely welcome for the newly self-employed thus far excluded. However, it must be noted that new businesses will more often than not have significant overheads in the early stages, and therefore without taking into account total income, rather than traducing profits, the newly self-employed will be further disadvantaged unfairly.

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[8] https://committees.parliament.uk/publications/4703/documents/47210/default/

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22 February 2021