Neutral Citation: [2025] UKFTT 00022 (TC)

Case Number: TC09394

FIRST-TIER TRIBUNAL
TAX CHAMBER

By remote video hearing

Appeal reference: TC/2023/00793

INCOME TAX – CJRS – whether recoverable by HMRC – whether claim could be based on earnings "reasonably expected" to be paid – whether individual was a fixed rate employee – whether Fifth Direction changed the position – Sixth and Seventh Directions also considered – appeal refused

Heard on: 12 December 2024
Judgment date: 9 January 2025

Before

TRIBUNAL JUDGE ANNE REDSTON
MR JAMES ROBERTSON

Between

CONVERGENCE MANAGEMENT CONSULTANTS LTD

Appellant

and

THE COMMISSIONERS FOR
HER MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Mr Khalid Mahmood, director of the Appellant

For the Respondents: Mr John McCabe, litigator of HM Revenue and Customs' Solicitor's Office

DECISION

INTRODUCTION

1. The Coronavirus Job Retention Scheme ("CJRS") was introduced following the lockdown announced on 23 March 2020. The CJRS provided funding for employers who furloughed their employees during lockdown rather than making them redundant.

2. Convergence Management Consultants Ltd ("CMC") has a single director and employee, Mr Mahmood. Between 2012 and 2017 CMC had intermittently paid a salary to Mr Mahmood; these payments were recorded on CMC's Real Time Information ("RTI") returns. CMC did not pay Mr Mahmood any salary between July 2017 and the end of March 2020.

3. Between April 2020 and September 2021, CMC reported Mr Mahmood's salary on its RTI returns, and made related CJRS claims totalling £46,619.48. After the CJRS closed, CMS did not pay Mr Mahmood any further salary.

4. Mr Mahmood submitted that CMC was entitled to claim CJRS because the claim was based on the salary to which he was "reasonably entitled". The factual basis for his submission was that in 2019-2020 he had a salary of £40,000 pa from a different employer (which had made him redundant in December 2019). The legal basis was that the law defined the "expenditure to be reimbursed" under the CJRS as "the gross amount of earnings paid or *reasonably expected to be paid* by the employer to an employee".

5. The Tribunal decided that the provision on which Mr Mahmood had relied was not relevant to the issue of whether an employer was entitled to make a claim; instead, it set out requirements as to what could be claimed by employers who met the entitlement conditions.

6. In addition to the submissions made by Mr Mahmood, the Tribunal also considered the Fifth Direction, which applied from 1 November 2020 to 31 March 2021. That Direction opened the CJRS to certain employees who had not received a salary in 2019-20, but who were paid after lockdown began. However, those rules did not apply to employees who had previously received a payment reported on an RTI return. Mr Mahmood had been paid by CMC in previous years and those payments had been reported to HMRC on CMC's RTI returns. As a result, CMC was not entitled to include Mr Mahmood in a CJRS claim made under the Fifth Direction.

7. The rules changed again in the Sixth and the Seventh Direction. Although we considered those amendments, we found that they not assist CMC.

8. We therefore refused CMC's appeal and confirmed the assessments.

EVIDENCE

9. The Tribunal was provided with a bundle of 586 pages, which included:

   (1) correspondence between the parties, and between the parties and the Tribunal;

   (2) minutes of a meeting between Mr Mahmood and Mr Declan Douglas, HMRC's investigating officer;

   (3) various internal printouts from HMRC's system;

   (4) CMC's unaudited Financial Statements for the years ended June 2019, June 2020 (as amended), June 2021, June 2022 and June 2023;

   (5) guidance issued by the government about the CJRS; and

   (6) various statements from CMC's bank account.

10. Mr McCabe's skeleton argument attached various documents from HMRC's system relating to Ocean Network Express (Europe) Limited ("Ocean Network"), the company which previously employed Mr Mahmood. These documents were provided at Mr Mahmood's request and we admitted them.

11. Mr Mahmood's skeleton argument included both evidence and submissions, and he also gave evidence orally in the course of the hearing. He was cross-examined by Mr McCabe and answered questions from the Tribunal. He gave credible and straightforward answers to most of the questions, although he was unable to answer those about CMC's financial accounts, see §19.

12. Mr Douglas provided a witness statement, and was tendered as a witness, but Mr Mahmood declined to carry out a cross-examination. The evidence in Mr Douglas's statement was thus accepted.

13. On the basis of the evidence summarised above, we make the findings of fact below, none of which was in dispute.

FACTS

14. CMC was established in 2007. At all relevant times, Mr Mahmood was its only shareholder, director and employee. Its principal activity is the provision of information technology ("IT") consultancy services.

15. In addition to his employment and directorship of CMC, in 2019 Mr Mahmood was employed by Ocean Network as an IT consultant. He was paid a salary of £40,000 per annum. The employment came to an end on 19 December 2019.

16. CMC submitted RTI returns for Mr Mahmood, which show that he was paid intermittently and occasionally. Ignoring pence for all but the relevant period, the RTI returns show that:

(1) In October 2012 Mr Mahmood was paid £1,114.

(2) In November 2012 to June 2013 he was paid between £20 and £83 a month.

(3) He was not paid between July and September 2013.

(4) Between September and December 2013 he was paid £300 a month.

(5) He was not paid again until April 2015, when he was paid £1,007, followed by £848 for each of the following three months.

(6) The next payment of £2,166 was in June 2017.

(7) There was no subsequent payment until that recorded on the RTI return for April 2020, of £3,192.66 The same payment was recorded for the following two months; this increased to £3,220.80 in July 2020 and continued at that rate until September 2021.

(8) From October 2021 to July 2023 (the last month for which records were provided to us) no payment was made.

17. On 20 April 2020, on behalf of CMC, Mr Mahmood made a CJRS claim of £5,616.33 for the period from 1 March to 30 April 2020; further claims were made every subsequent month until September 2021. The total amount claimed was £46,619.48, made up of £45,080 to Mr Mahmood, plus employer NICs and pension contributions.

18. CMC's statutory accounts for the year ended 30 June 2019 as filed with Companies House did not show any salary paid to Mr Mahmood, or any amounts owed to him. That is consistent with the RTI returns for the same period.

19. The Bundle included an amended version of CMC's statutory accounts for the year ended 30 June 2020, which gave a figure of £10,278 for "staff costs". This is similar to the amount shown as salary for Mr Mahmood from April to June (£10,080), albeit the related NICs and pension payments are absent. There were no creditors or accruals. These accounts also showed turnover of £196,200 and current assets of £1,886,077 (figures which Mr Mahmood was unable to explain). The accounts for the following year to 30 June 2021 did not include a profit and loss account, but stated that there were nil creditors and nil accruals.

20. On 10 August 2022, Mr Douglas opened a compliance check into CMC. Mr Mahmood told Mr Douglas that he had based CMC's CJRS claims on the £40,000 salary to which he was entitled when at Ocean Network, on the basis that this was the amount he "reasonably expected" to earn during lockdown.

21. After various exchanges of correspondence and a telephone interview, on 10 November 2022, Mr Douglas issued CMC with four assessments totalling £46,619.48 to recover the full amount of the CJRS claims. Mr Mahmood asked for a statutory review; the review officer upheld Mr Douglas's decision, and Mr Mahmood notified the appeal to the Tribunal.

THE LEGISLATIVE STRUCTURE

22. Section 76 of the Coronavirus Act 2020 provided that "Her Majesty's Revenue and Customs are to have such functions as the Treasury may direct in relation to coronavirus or coronavirus disease". Section 71 of the same Act provided:

> **"Signatures of Treasury Commissioners**
>
> (1) Section 1 of the Treasury Instruments (Signature) Act 1849 (instruments etc required to be signed by the Commissioners of the Treasury) has effect as if the reference to two or more of the Commissioners of Her Majesty's Treasury were to one or more of the Commissioners.
>
> (2) For the purposes of that reference, a Minister of the Crown in the Treasury who is not a Commissioner of Her Majesty's Treasury is to be treated as if the Minister were a Commissioner of Her Majesty's Treasury."

23. The law which governed CJRS payments was therefore made by a series of Treasury Directions. The First Direction was issued on 15 April 2020, and provided:

> "1. This direction applies to Her Majesty's Revenue and Customs.
>
> 2. This direction requires Her Majesty's Revenue and Customs to be responsible for the payment and management of amounts to be paid under the scheme set out in the Schedule to this direction (the Coronavirus Job Retention Scheme).
>
> 3. This direction has effect for the duration of the scheme."

24. The substance of the CJRS was set out in the Schedule to the First Direction. There were six further Directions and related Schedules, until the CJRS ceased at the end of September 2021.

FIXED RATE EMPLOYEE?

25. All the Directions distinguished between two types of employee, those which were "fixed rate" and others, and the wording of the relevant provisions was essentially identical. Paragraph 7.6(1) of the First Direction read:

> "A person is a fixed rate employee if:
>
> (a) the person is an employee, or is treated as an employee for the purposes of CJRS by virtue of paragraph 35.3(a) (member of a limited liability partnership),

(b) the person is entitled under their contract to be paid an annual salary,

(c) the person is entitled under their contract to be paid that salary in respect of a number of hours in a year whether those hours are specified in or ascertained in accordance with their contract ("the basic hours"),

(d) the person is not entitled under their contract to a payment in respect of the basic hours other than an annual salary,

(e) the person is entitled under their contract to be paid, where practicable and regardless of the number of hours actually worked in a particular week or month in equal weekly, multiple of weeks or monthly instalments, and

(f) the basic hours worked in a salary period do not normally vary according to business, economic or agricultural seasonal considerations."

26. In all the Directions, the term "contract" was defined as "a legally enforceable agreement", and this in turn was expanded to include "a legally enforceable agreement, understanding, scheme, transaction or series of transactions".

27. HMRC took the view that Mr Mahmood was a fixed rate employee; Mr Mahmood did not make any submissions as to whether or not this was the case. However, we find that Mr Mahmood was not a fixed rate employee, because:

(1) the £40,000 salary on which he had based the CJRS claim was the sum he "reasonably expected" to receive; not on any contractual agreement between him and CMC; and

(2) it is also clear from the financial statements no sum was accrued in the periods before or after the CJRS, to reflect any liability of CMC to pay Mr Mahmood salary for those other months.

(3) Mr Mahmood therefore did not have any "legally enforceable agreement, understanding, scheme, transaction or series of transactions" such as to constitute a contractual entitlement to be paid an annual salary of £40,000 by CMC.

THE FIRST DIRECTION

28. Paragraph 3 of the Schedule to the First Direction specified the employers to which it applied: essentially any employer with a PAYE scheme registered on HMRC's RTI system on 19 March 2020. It was common ground that CMC met this requirement.

29. Paragraph 5 was headed "Qualifying costs", and read:

"The costs of employment in respect of which an employer may make a claim for payment under CJRS are costs which –

(a) relate to an employee –

(i) to whom the employer made a payment of earnings in the tax year 2019-20 which is shown in a return under Schedule A1 to the PAYE Regulations that is made on or before a day that is a relevant CJRS day,

(ii) in relation to whom the employer has not reported a date of cessation of employment on or before that date, and

(iii) who is a furloughed employee (see paragraph 6), and

(b) meets the relevant conditions in paragraphs 7.1 to 7.15 in relation to the furloughed employee."

30. Paragraph 13.1 defined "relevant CJRS day" as follows:

"For the purposes of CJRS –

(a) a day is a relevant CJRS day if that day is –

(i) 28 February 2020, or

(ii) 19 March 2020."

31. It was also common ground that CMC satisfied paragraphs 5(a)(ii) and (iii) and 5(b). With regard to paragraph 5(a)(i), there was no dispute that CMC had not made a payment of earnings in the tax year 2019-20.

32. HMRC's position was that CMC was not entitled to CJRS because it had not made a payment of earnings in the tax year 2019-20 which was shown in an RTI return (being a "return under Schedule A1 to the PAYE Regulations") which had been made on or before either of the two relevant CJRS days.

33. Although Mr Mahmood accepted that CMC did not meet the conditions in paragraph 5, he relied on paragraph 8(1). This was headed "Expenditure to be reimbursed" and read (his emphasis):

> "Subject as follows, on a claim by an employer for a payment under CJRS, the payment may reimburse-
>
> (a) the gross amount of earnings paid **or reasonably expected to be paid** by the employer to an employee;
>
> (b) any employer national insurance contributions liable to be paid by the employer arising from the payment of the gross amount;
>
> (c) the amount allowable as a CJRS claimable pension contribution."

34. Mr Mahmood submitted that the words "reasonably expected to be paid" allowed CMC to make a claim for the amount of money which he reasonably expected to be paid on a monthly basis, given his previous employment by Ocean Network.

35. We disagree. As Mr McCabe said, it is paragraph 5 which sets out "The costs of employment in respect of which an employer may make a claim for payment", in other words, this is the paragraph which prescribes gateway conditions for a CJRS claim to be made.

36. The purpose of paragraph 8 is to set out the money to be reimbursed to employers who have already met the gateway conditions in the Direction. This can be can be seen from the following (our emphasis):

(1) Paragraph 5 begins "The costs of employment *in respect of which an employer may make a claim for payment under CJRS"* are those defined in that section. The conditions in that paragraph therefore have to be met for an valid claim to be made.

(2) Paragraph 8 begins *"…on a claim by an employer for a payment under CJRS, the payment may reimburse"*. This paragraph therefore set out the amount which can be claimed once the conditions in paragraph 5 have been met.

Conclusion as to entitlement to CJRS under the First Direction?

37. Paragraph 5 set out gateway conditions, and provided that an employer can only make a CJRS claim if it:

(1) made a payment of earnings to the employee in the tax year 2019-20; and

(2) reported that payment on an RTI return which was made on or before 28 February or 19 March 2020; and

(3) met the other conditions referred to or set out in paragraph 5.

38. CMC did not make any payment of earnings to Mr Mahmood in 2019-20, and the RTI returns for that tax year give a £nil figure for each month. As a result, CMC was not entitled to make a CJRS claim under the First Direction.

THE SECOND TO FOURTH DIRECTIONS

39. The Second Direction extended the duration of CJRS from 1 June to 30 June 2020, and so covered earnings of furloughed employees in respect of that period.

40. Paragraph 5 of the Schedule to the Second Direction defines "Qualifying costs" in identical terms to the First Direction. The same definition of "relevant CJRS day" was included at paragraph 13.1, and the extracts above from paragraph 8 of the First Direction are repeated in the Second Direction.

41. The Third and Fourth Directions made a number of changes to the CJRS, including the introduction of the concept of "flexible furlough", but the provisions discussed above were replicated without any change.

42. It therefore follows that CMC was also not entitled to claim CJRS in respect of Mr Mahmood for the periods covered by these three further Directions

THE FIFTH DIRECTION

43. The Fifth Direction applied to claims made from 1 November 2020 to 31 March 2021, and opened the CJRS to some further employers/employees. We considered whether this change assisted CMC in relation to Mr Mahmood.

44. Paragraph 6.2 provided that an employee qualified for CJRS if the employer had made a payment to that employee which was included on an RTI return delivered to HMRC between 19 March 2020 and 31 October 2020. Mr Mahmood **was** included on the RTI returns delivered to HMRC from 20 April 2020 through to 20 October 2020, and was thus a qualifying employee.

45. Paragraph 9 was headed "qualifying costs" and set out a complicated formula applying to employees who are flexibly furloughed. Paragraph 10 applied to employees, such as Mr Mahmood, who were not in that position but instead did no work. The paragraph provides that the amount of CJRS which may be claimed per month was the lower of:

(1) £2,500; and

(2) 80% of the employee's "reference salary".

46. The "reference salary" is therefore key to the amount of CJRS which can be claimed. The provisions are complex and interlinked, as explained below.

Reference salary

47. Paragraph 12.1 sets out how the reference salary is determined: it read:

> "The reference salary of an employee must be determined in accordance with-
>
> (a) paragraphs 13.1 to 13.8 and 15.1 to 15.7 if the employee is a fixed rate employee, and
>
> (b) paragraphs 14.1 and 14.2 and 15.1 to 15.7 if the employee is not a fixed rate employee."

48. Subparagraph (a) refers to paragraph 13.1, which defines a fixed rate employee in essentially the same terms as already discussed at §25ff; paragraph 13.2 then reads:

> "The reference salary of a fixed rate employee is the amount payable to the employee in the latest salary period ending on or before the employee's relevant reference day…"

49. Subparagraph (b) refers to paragraph 14.2, which similarly states that their reference salary depends on the "reference day".

50. Thus, before Mr Mahmood's "reference salary" can be established, we need to determine his "reference day".

The reference day

51. Paragraph 11.2 read:

> "The relevant reference day in relation to an employee to whom paragraph 11.3 or paragraph 11.5 applies is 19 March 2020"

52. Paragraph 11.8 read:

> "The relevant reference day in relation to an employee to whom neither paragraph 11.3 nor paragraph 11.5 applies is 30 October 2020."

53. Thus, if either paragraph 11.3 or paragraph 11.5 applied to Mr Mahmood, his reference day was 19 March 2020. If neither applied, his reference day was 30 October 2020.

Paragraph 11.5

54. HMRC said at [73] of their skeleton (emphasis added):

> "The Fifth Direction applied to claims between 1 November 2020 and 31 January 2021. At paragraph 11 this sets out how to determine the employees' 'relevant reference day' for determining their reference salary. The Respondents submit that the employees' reference day is 19 March 2020, pursuant to para 11.2 *as paragraph 11.5 applies*."

55. HMRC therefore relied on paragraph 11.5 as the basis for their submission that Mr Mahmood's reference day was 19 March 2020, and we first discuss that subparagraph. It read:

> "This paragraph applies to an employee if the employee's employer-
>
> (a) has made a CJRS claim in relation to the employee by virtue of a relevant provision…"

56. The meaning of "relevant provision" was given by paragraph 11.6:

> "The following are relevant provisions for the purposes of paragraph 11.5(a)-
>
> (a) paragraphs 9.1 to 11.3 of the first CJRS direction;
>
> (b) paragraphs 9.1 to 11.3 of the second CJRS direction;
>
> (c) paragraphs 37.1 to 39.3 of the third CJRS direction."

57. In order to understand paragraph 11.5, it is therefore necessary to look back at those earlier provisions.

(1) Paragraphs 9.1 to 11.3 of the First and Second Directions related to:

(a) employers that have no qualifying PAYE scheme;

(b) successions to a business, where the new employer has a qualifying PAYE scheme; and

(c) PAYE scheme reorganisations.

(2) Paragraphs 37.1 to 39.3 of the Third CJRS Direction were identical to the above, other than that they added further provisions which applied where there was a succession to a business, but where the new employer was not a qualifying employer.

58. Thus, paragraph 11.5 *only* applied where one of the "relevant provisions" was satisfied. None of the provisions applied to CMC. We therefore disagree with HMRC that Mr Mahmood's "relevant reference day" was 19 March 2020 as the result of paragraph 11.5.

Paragraph 11.3

59. However, the "relevant reference day" was also 19 March 2020 if paragraph 11.3 applied. This read:

> "This paragraph applies to an employee if-
>
> (a) the employer making the CJRS claim made a payment ("the payment") to the employee,
>
> (b) the payment was reported to HMRC pursuant to paragraph 22 of Schedule A1 to the PAYE Regulations in a return that the employer is required to deliver in accordance with regulations 67B or 67D of those Regulations, and
>
> (c) the return mentioned in paragraph 11.3(b) was delivered to HMRC on or before 19 March 2020."

60. CMC **did** make payments to Mr Mahmood and record them on RTI returns delivered to HMRC before 19 March 2020, see §16. For example, he was paid £2,166 in June 2017 and that sum was included on an RTI return.

61. We therefore agree with HMRC that Mr Mahmood's "reference day" was 19 March 2020, albeit for a different reason from that given in their skeleton.

Mr Mahmood's reference salary

62. Having established Mr Mahmood's reference day, it is now possible to determine his reference salary.

63. As already noted, the method of calculating the reference salary depended on whether the employee was a fixed rate employee or not. Since Mr Mahmood was not a fixed rate employee, his reference salary was determined by paragraph 14.2, which read:

> "The reference salary of an employee…whose relevant reference day is 19 March 2020 is the greater of-
>
> (a) the average monthly (or daily or other appropriate pro-rata) amount payable to the employee in the period comprising the tax year 2019-20 (or, if less, the period of employment) before the period covered by a CJRS claim began, and
>
> (b) the amount earned by the employee in the corresponding calendar period in the previous year."

64. Mr Mahmood received no earnings from CMC in either 2019-20 or in 2018-19, and as a result his reference salary was nil.

65. For completeness, we add that the position would have been the same had Mr Mahmood been a fixed rate employee. The reference salary for such employees was given by paragraph 13.2, which read:

> "The reference salary of a fixed rate employee is the amount payable to the employee in the latest salary period ending on or before the employee's relevant reference day."

66. CMC submitted an RTI return for the March 2020 salary period, which showed that £nil was paid to Mr Mahmood. Had Mr Mahmood been a fixed rate employee, his reference salary on the reference day of 31 March 2020 would also have been nil.

The CJRS payable for Mr Mahmood

67. As set out at §45, paragraph 10 provided that the amount of CJRS which could be claimed per month was the lower of:

(1) £2,500; and

(2) 80% of the employee's "reference salary".

68. Since Mr Mahmood's reference salary was nil, the maximum which could be paid to him under CJRS was also nil. CMC was therefore not entitled to claim any amount of CJRS for Mr Mahmood under the Fifth Direction.

THE SIXTH AND SEVENTH DIRECTIONS

69. The Sixth Direction was issued on 25 January 2021 and extended the CJRS to 30 April 2021. Paragraph 5 modified paragraph 14.2 of the Fifth Direction for non-fixed rate employees; it stated that the reference salary was that in the "corresponding calendar period occurring in 2019". As Mr Mahmood had no salary in any calendar period during 2019, this new provision does not assist CMC.

70. The Seventh Direction extended the CJRS to 30 September 2021. The wording of the provisions establishing the "relevant reference day" was amended by paragraph 11 to categorise employees as "Group 1" (with a relevant reference day of 19 March 2020); "Group 2" (with a relevant reference day of 30 October 2020) and "Group 3" (with a relevant reference day of 2 March 2021).

71. Paragraph 12 set out the meaning of a "Group 1" employee:

> "12.1 An employee is a Group 1 employee if a Group 1 payment has been made to the employee by a person who is a relevant employer.
>
> 12.2 A payment is a Group 1 payment if-
>
> (a) the payment was reported to HMRC pursuant to paragraph 22 of Schedule A1 to the PAYE Regulations in a return that the relevant employer is required to deliver in accordance with regulations 67B or 67D of those Regulations, and
>
> (b) the return mentioned in paragraph 12.2(a) was delivered to HMRC on or before 19 March 2020, and
>
> (c) the payment is not an excluded payment[1]."

72. This is similar to paragraph 11.3 of the Fifth Direction. As CMC had made payments to Mr Mahmood which were recorded on RTI returns delivered to HMRC before 19 March 2020, he was a Group 1 employee.

73. A person who was within the definition of a Group 1 employee could not be a Group 2 or Group 3 employee. This is clear from paragraphs 13.1 and 15.1, which say that a person is only a Group 2 employee if he is not a Group 1 employee, and he is only a Group 3 employee if he neither a Group 1 nor Group 2 employee.

74. Since Mr Mahmood is within Group 1, his reference day remained 19 March 2020, and CMC continued not to be entitled to claim CJRS.

[1] Excluded payments are (broadly speaking) those made to employees whose employment had ceased, so this subparagraph is not relevant

CLAWBACK PROVISIONS

75. Paragraph 8 of Schedule 16 to the Finance Act 2020 is headed "Charge if person not entitled to coronavirus support payment" and so far as relevant provides:

> "(1) A recipient of an amount of a coronavirus support payment is liable to income tax under this paragraph if the recipient is not entitled to the amount in accordance with the scheme under which the payment was made.
>
> …
>
> (5) The amount of income tax chargeable under this paragraph is the amount equal to so much of the coronavirus support payment
>
> (a) as the recipient is not entitled to, and
>
> (b) as has not been repaid to the person who made the coronavirus support payment."

76. Paragraph 9 is headed "Assessments of income tax chargeable under paragraph 8" and so far as relevant reads:

> "(1) If an officer of Revenue and Customs considers (whether on the basis of information or documents obtained by virtue of the exercise of powers under Schedule 36 to FA 2008 or otherwise) that a person has received an amount of a coronavirus support payment to which the person is not entitled, the officer may make an assessment in the amount which ought in the officer's opinion to be charged under paragraph 8.
>
> (2) An assessment under sub-paragraph (1) may be made at any time, but this is subject to sections 34 and 36 of TMA 1970.
>
> (3) Parts 4 to 6 of TMA 1970 contain other provisions that are relevant to an assessment under sub-paragraph (1) (for example, section 31 makes provision about appeals and section 59B(6) makes provision about the time to pay income tax payable by virtue of an assessment)."

77. There was no dispute that if CMC were not entitled to claim CJRS for Mr Mahmood, as we have found to be the position, then HMRC were entitled under the above provisions to reclaim the full amount by making income tax assessments.

OVERALL CONCLUSION AND APPEAL RIGHTS

78. For the reasons explained above, CMC's appeal is refused and HMRC's assessments upheld.

79. This document contains full findings of fact and reasons for the Tribunal's decision. Any party dissatisfied with our decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009.

80. The application must be received by this Tribunal not later than 56 days after the Tribunal's decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

Release Date: 09th JANUARY 2025