

This guidance was written for immediate use in 2010/11; if you have received a PAYE underpayment demand from HMRC for 2009/10 or earlier years in 2013, you should contact TaxAid for advice after looking at this information.

PAYE taxpayers – Has HMRC sent you a bill - or a refund calculation?

If you are a PAYE taxpayer – an employee or a pensioner – it is reasonable to assume that the tax you pay by deduction from your earnings or pension is correct. Unfortunately this is not always so. Also, it is easy to assume that if there are errors, someone else – like HMRC or the employer – will have to pay for it. Unfortunately this is not true either. The taxpayer can end up footing the bill, even when the original mistake was made by HMRC or an employer or pension provider many years ago.

With the introduction of a new National PAYE computer in autumn 2009, many errors from the past were identified. The following comments are designed to help you understand why this has happened and, for those cases which are still unresolved, to suggest a way forward.

A key point to remember is that the bills are legally due, even in cases where HMRC has made an error. So it is important to consider making arrangements to pay the bill even when you consider that HMRC should write the bill off. This is considered below in the section time to pay.

How has the underpayment arisen and what can be done about them?

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What is going on?

PAYE is a system of tax collection. Employer and pension providers use PAYE tax codes to decide how much tax to deduct from wage and pension payments. But PAYE deductions are, in a sense, provisional. PAYE does not always deduct exactly the right answer.

Employees and pensioners usually pay their tax at source under PAYE. But PAYE is only as good as the PAYE tax code used. If the wrong tax code is used, you will pay the wrong amount of tax. There are other circumstances, such as large redundancy lump sums and commuted small pensions, when the PAYE deducted according to the usual rules, may not be exactly right, when other income is taken into account.

Each year, HMRC checks its records for PAYE taxpayers to see if they have paid the correct amount of tax.

When HMRC checks the information it receives from the DWP, pension providers and employers it may find that, taking all your sources of income together, you have paid the wrong amount of tax.

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What is different now?

HMRC introduced a National PAYE computer in autumn 2009. This was the first time that all the PAYE records for each individual have been on one computer system. In the medium term this should mean that there are fewer errors. But in the short run:

- a) The system is likely to spot errors from the past
- b) There have been delays
- c) Initially (in January 2010), there were unexpected problems with many incorrect tax codes being issued

Another consequence of introducing the new system was that the routine checks made by HMRC to see that PAYE taxpayers have paid the correct amount of tax were delayed. This caused a significant backlog. The tax years 2007/08, 2008/09 and 2009/10 were particularly affected.

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Which years are affected?

The initial batch of calculations were for the tax years 2008/09 and 2009/10. HMRC then also processed the tax year 2007/08, but decided not to go back to 2006/07.

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Why there might be a problem

There are many reasons why there might be a problem. Common reasons include:

- Being given your annual tax free 'personal allowance' more than once. (The personal allowance is the amount of income you can receive in a tax year before you start to pay tax)
- A taxable benefit, such as a bereavement allowance or state pension, being ignored when working out your tax code
- Not being allowed enough tax free pay, or an error in the married couple's allowance or age allowance
- Mistakes about taxable benefits such as company cars

You can find out more about tax codes and how they work on the HMRC website at

<http://www.hmrc.gov.uk/incometax/codes-basics.htm>

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What to do if you have received a tax calculation

If you have received a tax calculation, you should check it. There is guidance on the HMRC website about how to check your tax calculation. This can be found at <http://www.hmrc.gov.uk/P800/>

For example, you should check that:

- you have been given the correct personal allowance for your circumstances

- your income details, and details of tax paid are correct (compare these to your P60 forms)
- any married couples allowance and age allowance are correct
- Amounts of taxable social security benefits, such as state pension and Incapacity Benefit, are correctly stated
- The amount of tax shown as paid at source from your employment or pension is correct

You need to establish exactly why the underpayment arose. If you have any remaining doubts, you should contact HMRC on 0845 3000 627.

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If you have paid too much tax

If you have paid too much tax, HMRC will automatically send you a repayment. This should happen within a week. It is important that you check the refund. If HMRC has made a mistake in the calculation of the refund, they could ask for the refund back later on.

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If you have paid too little tax

HMRC has advised that it will not try to collect underpayments of tax which are less than £300 for these years.

If the tax owing is £300 or more, but less than £3000, HMRC will normally collect the amount owing by changing your tax code. This means that you will pay more tax on your future income, normally over 12 months.

If this arrangement will cause you financial hardship, you can ask HMRC to collect the tax owing over a longer period of up to three years.

If you owe £3000 or more, HMRC will send you a bill. If you cannot manage to pay this in one go, you should phone HMRC to arrange more time to pay. You may be allowed up to three years, though 12 months is the more usual timescale. Interest, penalties and surcharges should not apply.

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When might HMRC consider writing off some of the tax owing?

Those in receipt of state pension or other taxable benefits

The Exchequer Secretary to the Treasury, David Gauke, made a written ministerial statement on 11 January 2011, which provides some additional guidance for pensioners.

The statement said that HMRC believes that there are some 250,000 pensioners who paid the wrong amount of tax in 2008/09 and 2009/10 because the state pension they received was not included in their tax code.

HMRC considers that many of these individuals would qualify for any underpaid tax to be written off under Extra Statutory Concession A19 (see below). This is because HMRC should have received

information from Department for Work and Pensions (DWP) which would have enabled the correct codes to be issued. Therefore HMRC does not intend to issue or collect tax underpaid in these cases.

We have since been told by HMRC that the same principle should apply to other DWP benefits (like taxable Incapacity Benefit).

If this applies to you, you should telephone HMRC and:

- Say that you have received a P800 calculation which shows tax owing
- Say that the error was that your taxable benefit was not included in the PAYE code
- Mention the Ministerial Statement by David Gauke on 11 January 2011
- Ask for Extra Statutory Concession A19 to be applied to your case

Other errors in tax coding

If you think there was a mistake by your employer or pension provider then you may ask HMRC to consider collecting the tax owing from your employer or pension provider. There is guidance on this on the HMRC website at <http://www.hmrc.gov.uk/manuals/pommanual/pay95011.htm>.

If you think tax was underpaid because of a mistake by HMRC, then you can ask HMRC to consider writing off some or all of the tax. It must have been reasonable for you to have thought that your tax code was correct – this means that you should have checked your tax code when it was issued. In addition, HMRC must have delayed in using information available to it.

HMRC considers a delay of 12 months from the end of the tax year in which it should have been aware of the error to be reasonable. This means that errors in 2009/10 would not normally be covered by this concessionary treatment, unless you were notified of the underpayment after 5 April 2011. Exceptionally, a shorter timescale is permitted where HMRC has made more than one error and has allowed arrears of tax to build up over two successive tax years. See the HMRC website at <http://www.hmrc.gov.uk/esc/esc.htm> for more details.

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Time to Pay

HMRC policy in this area is developing. You are likely to be offered up to 36 months to repay any underpayment. If you are unable to pay, or would experience financial hardship, you should prepare income and expenditure information and ask to speak the Underpayment Support Team. Your case can then be given special consideration. In exceptional cases, the debt may be written off on the grounds of hardship.

It is best to sort out time to pay with the PAYE office so as to avoid the issue of self-assessment tax returns. The issue of tax returns will make things more complicated as there are penalties for sending in the returns or payments late and interest will be charged on the debt.

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Further information and advice

You can contact HMRC for advice on 0845 3000 627. You will need the PAYE tax reference from your P60 form.

If you are on low income and would like help from TaxAid please look at our advice page <http://taxaid.org.uk/pages/taxaid-helpline>

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Standard letters for you to use

There are two pro-forma letters below on which you may base your letter to HMRC. The basic text of these letters is in **red**. Instruction and sections you need to change are in **blue**. You should fill in details of your own address, tax office and circumstances. It will help if you keep a copy of the letter.

You can copy the text from the examples below. It is very important that you are clear about the basis on which you are asking HMRC to write off or reduce the tax bill. There are two basic alternatives:

- 1) You consider that your employer or pension provider has made a mistake and has not applied PAYE correctly, this means that when writing to HMRC, you must point out what mistake you think the employer or pension provider has made, or
- 2) You consider that HMRC has not made timely use of information it held about your tax affairs and you could reasonable have thought you tax affairs were in order. In this case you must point out what error you think HMRC has made and why you could reasonably have thought your affairs were in order. You may also need to establish that HMRC has delayed sufficiently for Extra Statutory Concession A19 to apply

Letter a) is for the situation where you think your employer (or pension provider) has made a mistake – and so they should be responsible for paying the additional tax. ([Link to letter a](#))

Letter b) if for the situation where HMRC has made a mistake and has delayed in making use of information, and it was reasonable for you to think that your tax affairs were correct. ([Link to letter b](#))

a) Standard letter where you think your employer or pension provider has made a mistake

[Your address]

HM Revenue & Customs

[HMRC office address]

[Date]

Dear Sirs,

Your Name

Your National Insurance Number

I am writing in response to your tax calculations for the tax year[s] 2007/08, and/or 2008/9, and/or 2009/10 *[amend as appropriate]*.

The tax calculations appear to show an underpayment of tax for *[state tax years as above]*.

It would seem to me that my employer *[and/or pension provider]* cannot have operated PAYE correctly. I understand that the law and HMRC practice (as detailed in HMRC manual PAYE 95011) requires that HMRC should first “ensure that any underpayment of tax has not occurred because of an employer under-deduction”. I would ask you to review the operation of PAYE in this case and consider whether my employer *[and/ or pension provider]* should be held liable for the amount due. *[State here any particular reasons why PAYE may not have been operated correctly e.g. you handed over P45 but this was not processed, P46 procedure not followed, notices of coding not applied correctly]*.

Please confirm that you are seeking to recover the tax you believe to be underpaid from my employer and that I do not need to take any further action.

Yours faithfully,

b) Letter for the situation where HMRC has made a mistake and has delayed in making use of information, and it was reasonable for you to think that your tax affairs were correct.

[Your address]

HM Revenue & Customs

[HMRC office address]

[Date]

Dear Sirs,

[Your Name]

[Your National Insurance Number]

I am writing in response to your tax calculations for the tax years 2007/08, and/or 2008/09 and/or 2009/10. *[Amend as appropriate].*

The tax calculations appear to show an underpayment of tax when, as far as I was aware, my tax affairs were in order and all the tax I was due to pay had been deducted by my *[employer/pension provider]* under PAYE.

I accept that the calculations are based on my correct income figures *[if the calculations are not correct you should point out any errors].*

HMRC have failed to make timely use of information supplied to them and I would therefore like to apply for the tax to be given up under ESC A19.

This is on the basis that:

- HMRC had all the relevant information already in its possession.

P14s [and P11Ds] for 2007/08 would have been received by HMRC by 19th May 2008 P14s [and P11Ds] for 2008/09 would have been received by HMRC by 19th May 2009 and P14s [and P11Ds] for 2009/10 would have been received by 19th May 2010. State Pensions and Benefits data would have been received from the DWP in a similar timeframe.

- Whilst the underpayment has been notified to me within twelve months of the end of the tax year in which HMRC received the relevant information, the arrears have been allowed to build up over two whole tax years in succession and in these circumstances, ESC A19 allows for arrears notified within less than 12 months to be given up
- I had no reason to believe that my tax affairs were not in order. *[To make this statement, HMRC expect you to have checked the tax codes sent to you, and contacted them for explanations if necessary, or asked for help if you have particular problems eg with language, reading, numbers etc].*

Give further details of why you did not understand that you were underpaying tax e.g. I rang HMRC on xx date about my codings, and was assured all was correct;

I have never received any notices of coding to enable me to check my tax code; I have always worked as a xxxxx and have no experience of financial matters. I have only recently come to the UK and do not understand the UK tax system; I have had several part-time jobs and a number of changes, and have found it difficult to keep up with all the changes of tax codes; I have had the same two sources of income for many years. It does not seem reasonable that as an unrepresented taxpayer/elderly person I could understand that I might have underpaid tax in these circumstances. I have been suffering from... . I did not understand my notices of coding because...].

Failure to give up this tax under ESC A19 will cause me to suffer financial difficulties [give any relevant information about your personal circumstances].

I would therefore ask you to give this letter you urgent and sympathetic attention.

Yours faithfully,

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