

## Newsletter – September 2012

### Introduction

Underpayments of PAYE continue to affect large numbers of employees and pensioners. HMRC are currently contacting between 3.5 and 4 million PAYE taxpayers about 2011/12 over the summer – about 2 million will get repayments, but 1.5 million will find they owe tax because they have underpaid.

The annual reconciliation is now a regular feature for employees and pensioners taxed under PAYE employees, following the introduction of the National PAYE computer system in 2009. However, the continuing high numbers of those for whom the tax deducted is not quite right shows how important it is to check PAYE codes – particularly for those with more than one job or source of income. Yet another large change in PAYE is due – Real Time Information. It is difficult to assess the impact of this radical overhaul in the way PAYE information is sent to HMRC, but there must be concerns for those on low income and part-time workers with multiple employments. Compliance among employers in these categories is probably lower than in any other group.

This newsletter focuses on some of the tax problem areas advisers are likely to encounter over the next few months, and some forthcoming changes for low income workers. We will also look at some opportunities for dealing with late filing penalties and HMRC disputes.

### Contents:

- 1) [PAYE underpayments – 2011/12 reconciliations, and coding notices](#)
- 2) [Extra Statutory Concession A 19 to change](#)
- 3) [New on-line tax training videos](#)
- 4) [Real Time Information - How PAYE is changing](#)
- 5) [Student tax form P38\(s\) to be withdrawn](#)
- 6) [Tax Credits – renewal window](#)
- 7) [HMRC take a closer look at the self-employed](#)
- 8) [Tax return late filing penalties, appeals – and even prosecution](#)
- 9) [Alternative Dispute Resolution pilot continues](#)
- 10) [Closure of HMRC tax and benefits confidential helpline](#)

### 1) PAYE underpayments, 2011/12 reconciliations, and coding notices

HMRC is in the process of issuing demands for PAYE tax underpaid in 2011/12 to around 1.5 million employees and pensioners. At the same time, they will be processing refunds to more than 2 million taxpayers.

This annual ‘reconciliation’ process is now becoming routine since the introduction of the NPS system for PAYE in 2009. It means that underpayments should usually now just relate to the previous tax year (2011/12); HMRC expect average underpayments

to be around £500. In most cases, these amounts will be collected through the tax code for 2013/14 – which is when many advisers may become aware of the problem.

In practice, there may not be much that can be done about such underpayments; the terms of HMRC's concession A19 require delay in notification of the underpayment. So, unless an underpayment for 11/12 is notified after 5 April 2013, the concession will in general not apply.

This makes it even more important for taxpayers to check that their tax codes are correct. One area where problems arise is where individuals are working or getting an occupational pension, as well as getting a State pension or a taxable benefit like IB/Contributions based ESA. The P2 Notice of Coding should show the personal allowance (8105 for 2012/13) reduced by the annual amount of the State pension or taxable benefit. Check that the figure is correct. We see DWP figures which are too high (State pension figure includes non-taxable Attendance allowance) or too low (IB at basic rate, when higher rate has been awarded). If the code is not right, your client may get an unexpected bill next year – or be having too much tax deducted currently. HMRC will not apply concession ESCA19 where IB or State pension has been included in the code, but the amount is wrong. They expect the individual to check this figure.

We are still seeing problems for years up to 2009/10 where Incapacity benefit or ESA was not 'coded out' to collect any tax from another source of income (work or pension). HMRC has recently confirmed to TaxAid that ESCA19 should apply in such cases, in the same way as it does for those years if the underpayment is because State pension has not been coded out. Advisers should ask for ESCA19 citing the 'Ministerial statement of January 2012' in such cases.

[Top](#)

## **2) Extra Statutory Concession A19 to change**

For concession ESCA19 to apply, there must have been delay by HMRC in notifying an underpayment. With the annual reconciliation process, it will be increasingly rare for underpayments to be notified more than 12 months after the end of the tax year. So the concession is likely to be less useful in future. HMRC are also proposing changes from April 2013 to the way the concession is applied, which may restrict it further.

The details of the proposed changes can be found on the HMRC website consultations page at Consultation on ESC A19. Comments are invited by 24 September 2012 on proposals which include the need to make a claim before any underpayment of tax starts to be recovered through a change to a tax code

Taxpayers would need to show that they have ‘met their responsibilities’ which would include notifying HMRC of changes in circumstances and checking all tax codes (so, for example, if HMRC issues an incorrect tax code and the taxpayer fails to notice, then the relief would not apply).

The result of these proposed changes would seem to be a shift in HMRC’s favour. It becomes even more important to stress to employees and pensioners the need for them to check and understand their tax code(s).

[Top](#)

### **3) New on-line learning videos**

New TaxAid on-line tax videos are available. The E-learning is designed for front-line money, debt and employment advisers. There are ten modules guiding you through employment, migrant worker issues, PAYE underpayments, retirement, tax returns, tax debt and the self-employment. These are supported by on-line questions and answers and a ‘how to handle’ download sheet with additional information. The modules can be accessed independently and take around 15 minutes to complete.

The modules are:

- Paying the right amount of tax 1 & 2
- Employment scams, traps and abuses
- Tax troubles in retirement
- PAYE underpayments – the P800
- Employment problems
- Tax returns – when do you have to do one
- Tax debt part 1 – self assessment
- Tax debt part 2 – unexpected bills
- Tax debt Bankruptcy

They can be accessed from:

<http://taxaid.org.uk/guides/e-learning-live>

[Top](#)

#### **4) Real Time Information – How PAYE is changing**

HMRC is already running a Real Time Information (RTI) pilot with some employers. Most employers will join from April 2013, and all are due to be involved by October 2013.

Employers will continue to deduct tax and National Insurance under the PAYE rules – so there should not be any significant change for employees. RTI will mean that HMRC must be notified each time an employee is paid; employers will submit information to HMRC for each payday – rather than in summary form at the end of the tax year. From next year, RTI information is intended to provide the basis for calculating Universal Credit payments. This may mean major problems for employees who need to claim Universal credits if their employers are not operating PAYE, or not operating it correctly,

There will also be some changes in the procedures for paying new employees and for leavers and joiners. In particular, employers will need accurate details for each employee – including full names, dates of birth and National Insurance numbers.

Further information:

[General information on RTI http://www.hmrc.gov.uk/rti/index.htm](http://www.hmrc.gov.uk/rti/index.htm)

Operation of the RTI pilot

<http://www.hmrc.gov.uk/payerti/getting-started/pay-basics/rti.htm>

[Top](#)

#### **5) Student tax form P38(s) to be withdrawn**

The Christmas holidays are likely to be the last chance for students to get vacation earnings ‘tax free’. Currently, employers can use form P38(S) to pay students who work only in the vacations without deducting income tax – so long as earnings in the tax year are expected to be less than the tax free personal allowance.

Form P38(S) will be scrapped from next April, and all student employees will be taxed under the same PAYE rules as other workers. Some student workers will then have to pay tax at source and apply for a refund later. This can be done in-year on form P50 – see Form P 50 download sheet.

If the student works during each vacation, they may prefer to wait for HMRC’s annual reconciliation to send them any refund due automatically.

Students who work during term-time should be unaffected as the P38(s) concession does not currently.

For more details see:

<http://www.hmrc.gov.uk/payee/employees/start-leave/special/students.htm>

[Top](#)

## **6) Tax credits – renewal window**

Renewal information for tax credits was due by 31 July (even if this was estimated information for the self-employed, with final figures due by 31 January).

Where renewal was not automatic and no renewal figures have been provided, no claim for 2012/13 will have been made and payments will have terminated in August.

HMRC will reinstate claims with effect from 5 April 2012 if renewal figures (income for 2011/12) are provided within a window of 62 days – that is, by the end of September.

TaxAid tip: for the self-employed, the renewal figure can be an estimate of profits – but the final figure must be provided to HMRC by 31 January. Avoid overpayments by making any estimate as realistic as possible.

[Top](#)

## **7) HMRC takes a closer look at the self-employed**

From the start of September, some low-income, self-employed tax credit claimants will receive a letter from HMRC asking about their working hours. The letters are part of HMRC's error and fraud strategy, responsible for a campaign earlier this year to use information from credit companies to identify single claims where HMRC considered a joint 'couple' claim was required. Claims terminated under that campaign illustrated the difficulty of finding retrospective evidence, which is also likely to be a problem for the self-employed.

Tax Credit claimants must work the correct number of 'qualifying remunerative hours' in order to support a claim to working tax credit – see <http://www.hmrc.gov.uk/manuals/tctmanual/TCTM02411.htm>. HMRC will be seeking to establish both that the appropriate number of hours are worked; and that there is a realistic expectation of payment.

HMRC is likely to ask for a diary, or other record of working hours, showing what activities have been undertaken. While this is not currently a requirement for claiming tax credits, it is becoming increasingly important, especially in marginal cases, to have a record of working hours to support a claim. Non-commercial businesses (or 'hobby-trades') are particularly at risk. If remunerative hours are close to 16 hours per

week, such claimants would be well advised to check if working tax credit is the appropriate benefit to claim or whether another benefit, such as Employment Support Allowance or Jobseeker's Allowance may be available.

Claimants who do not reply to the letter may have their claim suspended. Claimants who cannot satisfy HMRC may have their claims cancelled.

HMRC's introduction to the intervention states:

“HMRC Benefits & Credits are due to start a campaign focussing on self employed work & hours from September onwards. Customers will initially be contacted by letter and where possible will receive a follow up telephone call to discuss their claim to establish if their self employment satisfies the criteria of being in remunerative work or otherwise is genuine for the purposes of entitlement to tax credits. Customers may be asked for evidence such as a breakdown of hours worked each week, work undertaken and nature of the business, a summary of bookings and/or appointments that have been made, invoices, receipts etc.

If a decision cannot be made by telephone or the conversation has led to an unsatisfactory outcome the caseworker will ask the customer to respond to the letter within 30 days. Failure to respond within the given timescales may result in tax credits being suspended.”

TaxAid tips: this is a real area of risk for people encouraged off benefits into self-employed work; if they are not getting adequate work, they may have to repay all their WTC.

We have seen HMRC officers state that work is not ‘remunerative work’ because the profits earned work out at less than National Minimum Wage (NMW). This approach is incorrect for tax credits. The self-employed earn profits which may vary greatly; there is no requirement for WTC that these should be equivalent to NMW; the requirement is for a certain number of hours of work. ‘floor’ rate (which may be linked to NMW) is proposed for Universal Credits.

[Top](#)

## **8) Tax return late filing penalties appeals – and even prosecution**

Late filing penalties for 2010/11 return have now reached £1,300 for both paper and on-line returns. The late filing returns for paper returns for 2010/11 will increase by another £300 from 1 November 2012 as we pass the anniversary of the due date (31 October 2011).

### ***How to deal with penalties on 2010/11 returns***

Asking HMRC to withdraw a return

If all the taxpayer's income for 2010/11 was correctly taxed at source (eg under PAYE), or they had no tax liability in the year, for example because they were out of work, then HMRC may, on request, withdraw the return. The number to phone is 0845 900 0444. The taxpayer should explain why no tax return is needed for the year. If the return is withdrawn, then all the late filing penalties will be cancelled.

HMRC will not withdraw a return if:

A tax return has been filed for the year (even if no tax is owing), or

If there is any self-employment income for the year – even if only for a few months

If a tax return has been issued, HMRC should not have performed a PAYE 'reconciliation'. So, if PAYE has been overpaid, the only way to get a refund may be to file the tax return. This will crystallise the penalties, unless the individual has a 'reasonable excuse' for filing late.

HMRC is aiming to introduce more formal rules on withdrawing returns from next year.

### ***Appealing against late filing penalties***

HMRC will not consider an appeal until the return has been filed. Once the return has been filed, an appeal against the penalty can be submitted. As this is the first year of the new penalty regime, HMRC is taking a slightly more lenient view of 'reasonable excuse' for missing the deadline.

Information about how to appeal can be found at <http://www.hmrc.gov.uk/sa/appeals-decisions.htm> and the appeal form can be downloaded at [http://search2.hmrc.gov.uk/kb5/hmrc/forms/view.page?record=3ScvEs7\\_4vk&formId=6706](http://search2.hmrc.gov.uk/kb5/hmrc/forms/view.page?record=3ScvEs7_4vk&formId=6706)

### ***Late tax returns – prosecutions***

In general, HMRC only prosecute people who have evaded tax – usually, by failing to notify HMRC that they are self-employed.

HMRC is now threatening to prosecute some people who are in the self-assessment tax system, but have failed to complete tax returns for several years. Letters have been sent to about 7,000 mainly higher rate taxpayers – but some may since have stopped their self-employment, and be on lower incomes.

To prevent the problem escalating, tax returns for 'old' years need to be brought up to date quickly.

[Top](#)

## **9) Alternative Dispute Resolution pilot continues**

Tax enquiries must count amongst the most stressful forms of contact with HMRC. The unrepresented low-income tax payer can feel overwhelmed. It is therefore good news that HMRC is extending its Alternative Dispute Resolution (ADR) trial.

This provides an alternative way for individual taxpayers and small businesses to try and resolve disputes when HMRC starts asking questions.

It is necessary to ask to be included in the trial, and not all cases are considered suitable for inclusion by HMRC. The trial now covers scenarios both when there is a decision which can be subject to formal appeal, and those which have not yet reached that stage.

The process involves a specially-trained HMRC officer acting as a facilitator. The facilitator, who has no prior involvement with the specific case, aims to broker a resolution. The process does not affect the usual rights of appeal.

Applications can be considered from anywhere in the UK, and around 70% of applications to use the trial have been accepted by HMRC. The process may help isolate the important issues, even when a final resolution by arbitration is elusive.

Applications can now be considered until 30 November 2012 and further information can be found at <http://www.hmrc.gov.uk/adr/index.htm>

[Top](#)

## **10) Closure of HMRC confidential tax and benefits helpline**

The HMRC confidential tax and benefits helpline has been closed. This helpline provided a route for individuals who had undeclared taxable income to discuss the situation anonymously with HMRC, prior to making disclosure. Those on low income were able to come within the system, with very low level arrears being written off.

Without this route, it can be difficult for individuals to know how to get back into the system. They will need to put together disclosure information – what their undeclared income (less business expenses) has been, and how long this has been going on.

There is more guidance on how to do this, and on HMRC's disclosure opportunities through 'campaigns' on the TaxAid website at <http://taxaid.org.uk/guides/undeclared-income>. It is important to seek professional help before contacting HMRC in such circumstances.

[Top](#)