RTI is appealing

Technical

01 February 2015

In September 2014 HMRC announced that the start date for automated in-year penalties for the late filing of full payment submissions (FPS) would be put back to 6 March 2015 for PAYE schemes with fewer than 50 employees. That means late-filing penalties for larger schemes of 50 or more employees started to accrue from 6 October 2014. Since HMRC plan to issue penalty notices quarterly, the first in-year late-filing penalties will start to be issued now. The penalty may be levied if you fail to submit an FPS on time, or fail to tell HMRC that no FPS is due, or HMRC receive fewer FPSs than they expect.

To coincide with the new penalty regime HMRC has also made available for employers and their agents an appeals system within its PAYE online service. It is still available only for appeals against RTI late-filing penalties but it is likely to be rolled out more widely.

Appeals against an in-year late-filing penalty can still be submitted by post but HMRC will upload these on to their systems so that they are processed electronically too. Normal time limits for appeals apply whether you use the electronic appeals system or write. HMRC may automatically accept an appeal, in which case a notification will be sent advising that the penalty notice is cancelled, or it may be referred for further review, in which case the appeal may be accepted, rejected or you may be asked for further information. If an appeal is rejected you can apply for it to be listed for a hearing.

So what should you do if you receive a penalty notification? First, if it relates to a period between 6 October 2014 and 5 March 2015, check that you are a large employer! The measure of whether you are one is the number of employees on 6 October 2014. If you had fewer than 50 you are not a large employer and you should appeal, giving this as your reason.

Next, check whether there have been any failures to file FPSs on time. If there were none, appeal on the basis that you ‘filed on time’. If there were some failures check how many HMRC have recorded. Remember that the first failure in a tax year is not penalised (although this exception does not apply to employers with 50 or fewer employers for 2014/15). So if there has been a failure in one month but HMRC have also incorrectly recorded a failure for a different month you can appeal on the basis that it is the first one of the tax year.

If the penalty notice relates to a failure to file the expected number of FPSs check that they were due. If either HMRC have wrongly recorded the expected number of FPSs to be filed each month, or they expected four each month but only three were filed for a couple of months because the business closed for a period and paid wages in advance, submit an appeal. The online system allows you to choose ‘filing expectation incorrect’ as a reason for the appeal.

If no FPSs were due for a month, perhaps because no payments were made, but a nil employer payment summary (EPS) was not filed for that month you can appeal on the basis that there were ‘no payments to employees’.

If the penalty notice relates to the late filing of an FPS, check it to see which payments to employees were made on a date before submission. Then check whether these payments were correctly recorded on the FPS or whether one of the exceptions to the ‘on or before’ filing requirement applies (but was not recorded in the FPS) or whether it relates to a correction of a payment previously but incorrectly reported. If appropriate, appeal on the basis that of a ‘missed correction/easement’ or ‘data on the returns was incorrect’.

If none of the above applies but there is a reasonable excuse for filing the FPS late, an appeal on this basis may be made. HMRC consider the following may give rise to a reasonable excuse:

- fire/flood/natural disaster;
- death/bereavement (for instance, of key employee or close relative);
- ill health;
- theft/crime; and
- IT difficulty.

But HMRC will ask when the reasonable excuse ended and you must have filed any outstanding FPSs within a reasonable time of the reasonable excuse ending for an

appeal to be successful. In particular, you should file any outstanding FPSs before submitting the appeal.

It is probably also advisable to start checking the accuracy of any Generic Notification Service (GNS) messages received stating that a late FPS has been filed or none has been received or insufficient FPSs have been received. Since it is not a penalty notice, it is not possible to appeal against the GNS message, if it is incorrect it may be worth notifying HMRC why this is so. If a penalty notice is subsequently wrongly raised you can use this to support the appeal.

Even if you agree that there are failures that give rise to penalties for late filing you should check that the penalty has been calculated correctly because its size will depend on the number of staff.

In summary, any RTI penalty notice received should be carefully checked. If you are in doubt about its accuracy or you think that there is a reasonable excuse for the late filing, it would be advisable to appeal.