More than just a tax issue

Employment Tax | Personal tax



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Victoria Todd and *Sharron West* highlight the impact which real time reporting of PAYE information can have on employees receiving universal credit

Key Points

What is the issue?

RTI data is not only used by HMRC to calculate an individual's income tax; it is also used to automatically calculate universal credit (UC) awards. RTI data that is wrong, incomplete or sent to HMRC late can impact on the amount of UC an employee gets.

What does it mean for me?

Employers and their advisers need to understand how their actions can impact on their employees' tax and benefits position and be able to answer questions from employees.

What can I take away?

RTI data submitted by employers is increasingly used outside the tax system and so any problems not only impact on an employees' tax position but could also impact benefits payments and potentially other areas such as student loans.

Real time reporting of PAYE information has been with us now since 2013. According to the RTI post implementation review report published in December 2017, HMRC's view is that: 'RTI is performing well with HMRC processing real time information for more than 40 million employees and occupational pensioners to support PAYE and universal credit.' However, the report acknowledged that 'a proportionately small number of data quality issues and mismatches between HMRC and employer records continue to create discrepancies'. But even a small proportion of 40 million records means that many thousands of taxpayers are likely to be affected.

There are a number of tax issues that can flow from incorrect data being sent to HMRC, which can be difficult for individuals to understand and then resolve. Even when the data sent to HMRC by an employer is correct, problems can still arise as a consequence of data processing and matching by HMRC. This will usually come to light when a P800 tax calculation showing an apparent tax 'debt' is queried, or where unexpected tax returns are issued to someone who is usually outside self-assessment but who has ignored a P800 tax bill. These problems are frequently seen by our colleagues at the tax charities, TaxAid and Tax Help for Older People.

However, as readers may be aware, the use of RTI data goes beyond the tax system. Universal credit (UC), which was introduced in 2013 and is gradually replacing six other means tested benefits (including tax credits), uses the RTI data from HMRC to automatically calculate UC awards. There are clearly some benefits to using RTI data

in this way – a potential reduction in fraud and error and a reduced burden on claimants to report regular changes in income, for a start. However, if the data is incorrect, it can lead to an unexpected reduction in UC or even a cancellation of the claims altogether.

Universal credit and RTI data

The cornerstone of the UC system is the use of RTI earnings data for employed claimants. HMRC pass earnings data to the Department for Work and Pensions (DWP) on the payment date shown on the Full Payment Submission (FPS), unless the data is received by HMRC after 9pm that day, in which case it will be sent the following day. If an FPS is submitted later than the payment date shown, it will be passed to DWP on the day of receipt (if received before 9pm). DWP policy, based on their interpretation of the UC regulations, is to include the income in the UC assessment period in which it receives the data from HMRC when calculating the UC award (Universal Credit Regulations 2013 Reg 61).

This interpretation was the subject of a High Court case *R (Johnson and others) v Secretary of State for Work and Pensions* [2019] EWHC 23 (Admin) in January 2019. We have looked at this in detail in our website articles '[Universal credit payment problems – could HMRC hold the key?]' and '[UC two payments in one assessment period problem – what next?]'. We understand that DWP are appealing the decision.

The assessment period for UC payments usually starts on the date a claim is first made and stops the day before the same date of the following month. Therefore, if a claim is made on 28 July, the first assessment period runs from 28 July to 27 August. All subsequent assessment periods then run to the 27 th of the month. There are slightly different rules where claims start on the 29 th, 30 th and 31 st of a month.

Late and/or incorrect FPS submissions

Any FPSs filed late could have an impact on a UC claim, as the late submission could mean that earnings are moved into a different UC assessment period, making it look like there are higher earnings than there really are. Similar issues can occur if the submission is incorrect; for example, if the employer enters earnings of £2,000 instead of £1,000.

Example 1: Late FPS submission

Jennifer's UC assessment periods run from 18 th of one month to 17 th of the following month. Jennifer is usually paid on the 15 th of each month. In July 2019, Jennifer receives her pay as usual on 15 July but her employer sends the FPS submission to HMRC on 19 July. As a result, DWP think that Jennifer has no earnings for her assessment period ending on 17 July 2019 and pay her the maximum amount of UC based on her circumstances.
In the following assessment period, from 18 July to 17 August, Jennifer has two sets of earnings taken into account for her UC award. This is because HMRC send the data to DWP on 19 July (in respect of the payment made on the 15 July) and on the 15 August (in respect of the payment made on the 15 August).

An obvious reaction to this might be that Jennifer should not be any worse off overall because when looked at together she will receive a much higher than usual UC payment in the earlier assessment period and a much lower than usual UC payment in the following assessment period. However, other UC rules mean that she could actually lose out financially (as well as potentially suffering hardship from an unexpected missed payment of UC). For example, if Jennifer was responsible for a child, she would lose entitlement to the work allowance (the amount you can earn before the UC taper of 63% is applied) in one assessment period. In addition, the double pay is likely to end her UC claim, meaning that she will have to claim again. It may also mean that she is subject to other UC rules, such as the benefit cap and surplus earnings – all of which can lead to further financial loss for Jennifer. (For further information about the work allowance and benefit; and for surplus earnings.)

HMRC guidance where a pay day falls on a non-banking day

There are also circumstances where these same effects can be seen even when an employer makes their RTI submissions in accordance with their legal obligations. The legislative requirement of reporting RTI data 'on or before payment date' (Income Tax (Pay As You Earn) Regulations 2003 Reg 67B) has been drummed into advisers and employers alike by HMRC over the years. However, this is not really the whole story, as there are some concessions to this which alleviate some of the difficulties faced by UC claimants. For example, where a regular pay day (which we will now refer to as the contractual pay date) falls on a weekend or a bank holiday, most employers will pay their employees on a different day. Typically, this will be the last working day before the contractual pay date (although it may be the next working day after that date).

Following the ‘on or before’ rule, we see cases where employers report the actual payment date in field 43 of the FPS submission and send their FPS on (or before) that date in order to comply with their obligations. However, HMRC’s CWG2 booklet ‘Employer further guide to PAYE and National Insurance Contributions’ tells employers in this situation to use the contractual pay date rather than the actual pay date in their FPSs.

Example 2: Bank holiday

Suppose the contractual pay date was the last day of the month, so the employees were due to be paid on 31 August; however, 31 August was a bank holiday Monday and so they were paid on Friday 28 August. UC claimants with an assessment period from 29 July to 28 August would have two months of wages included if the FPS was completed based on the actual date of payment, as the wages paid on both 31 July and 28 August would fall into the same assessment period.

However, if the FPS was completed based on HMRC’s guidance, the FPS for the August payroll would still show the payment date as 31 August; therefore, the two payments would fall into different assessment periods. The UC claimant would not suffer the same consequences as Jennifer in the example above. The employer should then report the payments on or before the contractual pay date – not the actual pay date.

HMRC guidance

Although in many cases payroll software may automatically deal with this, over the last few months we have been inundated with emails from people who find themselves in this position. As shown above, it can lead to (an often unexpected) drop in their UC and so significantly affect their ability to budget for their household expenses. Therefore, it seems likely that some employers may not be aware of HMRC’s guidance.

HMRC are aware that their CWG2 guidance is not being followed correctly and have made several attempts to reiterate the position to employers. The guidance was reproduced in full in the April 2019 Employer Bulletin in the context of pay days around the Easter holiday period.

This followed a last minute press release to employers on 17 December 2018 advising that if employees were to be paid early due to the Christmas period, the FPS should still show the contractual pay date as the payment date when submitted to HMRC. Interestingly, this statement was not restricted to actual payments taking place on the last working day before the contractual payment date (which is the circumstances covered by the guidance in CWG2) but applied to any payment of wages for the Christmas period that was paid earlier than the contractual pay date.

Most recently, the October 2019 Employer Bulletin contained two further articles about this guidance. The first article restates the position when the payday falls on a non-banking day and links to the CWG2 guidance (thereby clarifying the inaccurate information published in the August 2019 Bulletin), and the second advises that the guidance given in December 2018 in relation to payment of wages at Christmas 2018 is now to be a permanent instruction for future years. HMRC describe these instructions, relating to which payment date to report on the FPS, as ‘payment reporting easements’. It seems to us that HMRC are trying to make the RTI system work better for UC claimants. However, as there does not appear to be any obligation on employers to comply with the easement, there are no formal grounds for employees to ask employers to change their practice or amend any data.

Final thoughts

The use of this informal, non-statutory guidance by HMRC to provide an easement means that taxpayers, whether individuals or employers, have less leverage when pressing for resolution of a problem than would be the case if the issues mentioned in this article were dealt with by statutory measures. It can also lead to inconsistency and confusion amongst employers and HMRC staff.

The scenarios outlined here illustrate the significant impact that RTI data irregularities can have on taxpayers. Tax advisers with clients who are employers need to be aware of the issues that might arise and the impact of using (or not using) the concessions, as both HMRC and DWP often send UC claimants to their employer to resolve issues.