Really Troublesome Interactions

Employment Tax



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Matthew Brown considers what an agent or employer should do if they dispute a PAYE charge raised by HMRC

Key Points

What is the issue?

Resolving PAYE disputes can involve considerable time and effort by agents

What does it mean to me?

Sometimes no fully payment submissions are submitted or HMRC think some are missing. In such cases HMRC will create a ‘specified charge’

What can I take away?

If the matter cannot be resolved straightaway, ask for it to be referred as a disputed charge to the Charge Resolution Team

Since August 2014 when HMRC wrote to employers that were disputing a PAYE charge it has become evident that many businesses are continuing to take this course of action. Resolving disputes can involve considerable time and effort by agents. HMRC’s own figures indicate that they are receiving 650 new disputes a week, which in some cases are taking months, if not years, to clear.

PAYE charges

At the end of each tax month HMRC’s system searches all full payment submissions (FPS) received from an employer (single PAYE reference) and creates a total of PAYE, NICs and student loan deductions for all employments with that organisation for the tax year to date (YTD). The total due to HMRC is then computed by deducting from that month’s YTD figure the previous month’s YTD figure. If an employer payment summary (EPS) is submitted by the 19th of the month after the end of the tax month, for example to reclaim statutory maternity pay, HMRC deduct the net difference between that month’s YTD EPS figure and the previous one. This produces the sum HMRC expect to receive by the 19th or 22nd of the month.

Specified charge

Sometimes no FPSs are submitted or HMRC think some are missing. In such cases HMRC will create a ‘specified charge’, broadly based on what has been paid or is expected to be paid previously in the year to date. If a specified charge is issued the PAYE charge calculated cannot be ‘disputed’. It can be overridden only by submission of the missing FPS. Submission of an FPS for a later tax month with the correct YTD figures will not remove the specified charge calculated for the earlier month – but may give rise to a ‘credit’ and a need to reallocate payments between months.

Different HMRC figure

There are many reasons why HMRC's figure does not match the amount the employer expects to pay when all FPSs have been submitted. Examples include submitting an EPS on the 20th rather than by the 19th, incorrect use of the late reporting reason codes, and reporting more than one payment to an employee in the same FPS. Historically, the main problem has been employee records being duplicated by HMRC, perhaps because employees' details on that month's FPS differs from the previous month's. Last year HMRC had to reconcile around 14 million unmatched or duplicated records. Whatever the reason, history tells us that once a discrepancy in the PAYE due arises it can be difficult to resolve.

Discrepancy

What do we do if we disagree with the amount of PAYE HMRC think should be paid? A discrepancy may be identified from the PAYE online payments and liabilities record or through a demand from HMRC's Debt Management and Banking (DMB). If so, start by checking the YTD figures and that all FPSs and EPSs have been submitted on time and receipt acknowledged by HMRC. If any returns are outstanding submit them. HMRC will not stop debt recovery action if there is an outstanding return. If all returns have been filed on time and the figures still do not reconcile contact the HMRC Employer Helpline to try to establish a reason for the discrepancy. This could be because a return has been rejected or is yet to be processed. If the matter cannot be resolved immediately you must ask HMRC to refer the matter to their Charge Resolution Team (CRT) as a disputed charge (DC). If a case has been referred to CRT, HMRC will issue an acknowledgement letter confirming this unless you have agreed that none needs to be issued – If you have not waived receipt of the letter and none is received there is no DC.

Discrepancy resolution

HMRC will review the case, try to identify the reason for the discrepancy and remedial action needed before contacting the agent or employer. A DC is treated as resolved if the agent or employer agrees HMRC's revised figures – in which case any amount agreed as still owed will be released for collection by DMB. If the agent or employer disagrees with the revision a new DC will be registered. The employer should never be asked to submit an amended FPS for the disputed month if a later

month’s FPS has already been submitted; nor should an employer be asked to submit an earlier year update (EYU) with ‘correcting’ figures if the FPSs originally submitted included the correct figures. If HMRC have been unable to contact the agent or employer – we are assured that several attempts at contact will be made – the case is closed and the original charge will be referred back to DMB for collection. Establishing contact is apparently HMRC’s biggest problem when trying to resolve a dispute, so make sure they have up-to-date contact details recorded. This is especially important given the time it can take for them to investigate.

Payment demand despite DC

DMB ought not seek payment when there is a DC but we know they do. HMRC flag the employer’s PAYE record when there is a DC, so DMB should not have been demanding payment of the disputed amount if this flag is present. But, as noted above, a DC is cleared if HMRC have been unable to make contact, so this may be one reason for payment being demanded when the employer still thinks the amount is a DC. Another reason could lie with HMRC’s payment allocation system because no one stands over a DC when allocating employer payments.

Employer payment allocation

Let’s say an employer makes a PAYE payment and includes the full accounts reference as well as the correct year and month. If the payment equals the charge the payment is allocated to that charge and it is cleared. If the payment is greater than the charge the excess is re-allocated to the oldest debt. So if HMRC have under-calculated that month’s PAYE charge and the employer pays the correct amount, the ‘excess’ will be allocated back to a previous month’s DC. This could then clear that DC but create a new dispute after HMRC recalculates the correct PAYE charge for the current month. If the payment is less than the charge, the balance is sent for recovery action by DMB. If the employer’s payment includes the accounts reference but does not include the year and month the payment relates to, HMRC will assume it is a payment for the most recently ended tax month. This may mean that, if the employer is paying early – that is, before the tax month end – the payment could be allocated to a previous month’s DC. Should that happen, the DC is treated as resolved and the employer will have to establish a new dispute for the current month. If no accounts reference is included with the employer’s payment – which HMRC say happens often – the Revenue will manually trace the employer and

allocate payment. This may result in the payment clearing a previously recorded DC. But the first the employer knows of this is when recovery action is taken for non-payment of a later month's PAYE charge. If the employer is traced, but the payment cannot be allocated to a debt, the employer's record will record an unallocated, that is unmatched, payment. Otherwise there is an unallocated credit in HMRC's account until the record is traced.

DC resolution

HMRC's system does not reduce the amount due for the month to which the DC relates unless it is month 12 or the department can immediately resolve the dispute. Instead, HMRC will reduce the sum due for the current month. So, although the YTD figure is now correct, the payments made by the employer will not match what the HMRC system shows is due for each month and payments to the Revenue will have to be reallocated accordingly. This makes life complicated if another dispute arises and you are trying to reconcile payments with amounts due.

Although HMRC have introduced a new resolution team to process DC and overpayments, it is clear that DCs remain a constant annoyance for employers and tax practitioners alike. To minimise the potential for a dispute, PAYE payments should show the full accounts reference, including year and month, so payments are allocated correctly. Also, if an FPS cannot be filed on or before payment is made, at least file it before the month end – with a late reporting reason – and, where necessary, file the EPS before the 19th. Further, query any discrepancy in the amount of PAYE HMRC are expecting to receive immediately you become aware. If the matter cannot be resolved straightaway, ask for it to be referred as a DC to the CRT.