Off-payroll working: calculation of PAYE liability in cases of non-compliance

Employment Tax



22 August 2023

The CIOT has supported proposals to allow a set-off for taxes already paid by a worker/intermediary against taxes due from a deemed employer in off-payroll working compliance settlement cases.

The CIOT has responded to a HMRC consultation proposing a legislative change to allow HMRC to take into account taxes already paid by a worker and/or their intermediary (typically a personal service company) when calculating PAYE/NIC due from the deemed employer, where the end client has mis-categorised a worker's deemed employment status as outside the off-payroll working (OPW) rules when it is subsequently agreed that they should have been within the OPW rules.

In effect, under the proposed set-off approach the PAYE income tax and employee NICs liability would be shared between the client (deemed employer), the worker

and the worker's intermediary, rather than the client bearing all the liability while the worker and their intermediary are entitled to reclaim taxes already paid.

The solution proposed in the consultation document is a set-off approach, similar to the offset permitted for taxes, including corporation tax and NICs, that have already been paid by a worker/their intermediary in PAYE compliance settlement cases (see Regulations 72E-G of the PAYE Regulations 2003 (SI 2003/2682)). The CIOT were supportive of this approach, having previously suggested something along these lines for ease of administration and fairness.

In our opinion, a set-off approach would be much fairer than HMRC's current approach of notifying affected workers and intermediaries of the status recategorisation and then requiring the worker or their intermediary to recalculate their taxes, amend tax returns and submit claims for overpayment relief.

In our response, we also agreed that HMRC should have some flexibility in determining the amount of the set-off, including estimating the amount from information and data at its disposal. However, we recommended that this should be tempered with a right for the deemed employer to challenge HMRC's calculations and provide more accurate figures if it can obtain the necessary detail from the deemed worker and their intermediary.

If adopted, the legislation for this new approach will take effect from 6 April 2024 in relation to all open compliance settlement cases. While we agree with this, we have suggested early confirmation that the new approach will be legislated for, and also confirmation that ongoing compliance cases can be provisionally negotiated on the basis of this new approach being adopted. This is to avoid current cases being stalled while we wait until next April to negotiate the set-off and pay the resultant net liability.

The full CIOT response can be found here: www.tax.org.uk/ref1129

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