Salary advances: Proposed amendments to Regulations

Employment Tax



22 November 2023

The CIOT and LITRG have responded to a HMRC consultation on amending the PAYE Regulations to defer PAYE reporting of salary advances.

The CIOT and LITRG have responded to a short technical consultation on proposed PAYE amendment regulations, which are intended to allow employers to delay reporting an advance payment of salary (‘salary advance’) made to an employee until payment of the remainder of that salary instalment, where certain conditions are met.

In recent years, there has been a proliferation of third party salary advance schemes, which charge a fee for their services and which maintain that their arrangements have no impact on employer payroll processes. The technical consultation follows an announcement made by HMRC in Agent Update 102 (tinyurl.com/yc3rbj79) in which they set out their view on the proper reporting of salary advances.

Some employees seem to be turning to these schemes to simulate being paid weekly rather than monthly (whereas if employers simply paid weekly, there would be no need for the employee to incur fees to access their wages). Both CIOT and LITRG were disappointed that HMRC are treating this as a small change and do not seem to be appreciating the wider significance of it. We felt that HMRC would have been better starting with a public consultation, including proper impacting, rather than jumping to drafting legislation to effect the proposed change. In our view, amending the regulations as proposed without wider consultation could be seen as signalling that HMRC support the use of schemes that the Financial Conduct Authority have raised some concerns about.

LITRG was not convinced that HMRC have thought through all of the potential practical issues and interactions, including the fact the proposed changes undermine the entire principle of ‘on or before’ PAYE reporting and that some payroll software was not currently set up to capture advances. This could introduce the scope for errors and mean that employees may struggle to reconcile their payments into the bank with their payslips. Adding that the use of the word ‘must’ in the draft legislation looks set to penalise all those employers that have chosen to be compliant; that have accounted for advances in the correct manner to date; and that may wish to continue to do so, rather than change to a new system.

LITRG also queried whether employers that currently pay weekly might swap to using this monthly system to reduce their admin burden and exposure to penalties. There is concern over interactions for universal credit, national living wage and minimum wage recipients. In addition, the position is unclear as to what, if anything, HMRC are going to do in terms of all the historic non-compliance generated by these schemes.

The CIOT also raised some technical issues on interpretation of the proposed regulations; in particular, the meaning of ‘main relevant payment’. Contractual payday is not defined as such in the PAYE regulations, so we have some concerns around interpreting ‘main relevant payment’ where consistently a larger proportion of earnings is received as a salary advance than at the normal contractual payday. We have also raised some points regarding the timing of employer PAYE payments where salary advances are made in an earlier tax month to the remainder of the pay.

The CIOT response is available at: www.tax.org.uk/ref1220 and the LITRG response at: www.litrg.org.uk/ref2802.

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