Calculating PAYE liabilities in cases of non-compliance for off-payroll working

Employment Tax



19 March 2024

The CIOT has responded to a technical consultation setting out the mechanism by which HMRC will be able to account for taxes already paid by individuals and their intermediary on income received from off-payroll working when recovering the tax due under PAYE from the deemed employer.

The CIOT has welcomed the publication of draft regulations (and associated guidance) which from 6 April 2024 will remedy the situation whereby in off-payroll working compliance settlements the ‘deemed employer’ (public body or large/medium-sized business) effectively bears all the tax (barring any contractual right of recovery), and the worker (and their limited company) is entitled to reclaim corporation tax, income tax (usually dividend tax) and (in certain circumstances) national insurance contributions they have paid.

The draft regulations make amendments to the Income Tax (Pay As You Earn) Regulations 2003 (PAYE regulations), inserting new regulations regarding the recovery of PAYE following a compliance check into the application of the off-payroll working rules. The amendments set out a mechanism by which HMRC will be able to set-off taxes already paid by individuals and their intermediary on income that is subsequently determined to have arisen from an ‘inside IR35’ off-payroll working arrangement when recovering the tax now due from the deemed employer.

While supportive of this measure, we have raised a number of concerns with the draft regulations.

New regulation 72GA(2)(a) provides that one trigger event will be HMRC serving notice of a determination under regulation 80 that includes tax in respect of the deemed direct payment. However, under regulation 72GA(1)(e) that trigger event must occur on or after 6 April 2024, so where a protective assessment has been issued before 6 April 2024 it will not be possible to request a set-off.

A similar issue arises where a recovery notice has been issued under Chapter 5 of Part 4 of the PAYE regulations (regulation 72GA(2)(c)) prior to 6 April 2024. We have suggested reframing the trigger events so that only determinations and recovery notices that have become final or are not under appeal are excluded from these new provisions. We also suggested clarifying in guidance that where HMRC has received a letter of offer (under regulation 72GA(2)(b) and (3)) that has not been finalised and accepted by all parties prior to 6 April 2024, the deemed employer can request a set-off under regulation 72GB.

New regulation 72GB(5) provides for one or more directions being combined and issued as a single notice to the deemed employer (or relevant person). However, to make it easier for the deemed employer to check whether the notice is correct and complete we have suggested that separate notices are issued to the deemed employer noting the name(s) of the payee involved, or at the very least that a supporting schedule is included with the notice confirming the names of the intermediary/worker and their set-off figures.

New regulation 72GC provides the grounds under which an appeal against a direction notice may be made, but only the intermediary/worker has a right of appeal. The payer/deemed employer is excluded from being able to appeal (albeit HMRC will review the amount of set-off if evidence is provided that a different

amount is due). We have suggested that since the deemed employer has a financial interest in the set-off amounts, they should also have a right of appeal.

The full CIOT response is available here: www.tax.org.uk/ref1286.

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