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Global Employer Services

GES NewsFlash

United Kingdom – HMRC and New Penalties for Late Payments

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Executive Summary

From 6 April 2011 HMRC will begin to apply the new penalty provisions in respect of late payment of PAYE, Class 1, 1A and 1B NIC, Student Loan deductions and Construction Industry Scheme deductions. These provisions relate to amounts due in respect of 'in year' deductions for 2010/11 and subsequent years. By 5 April 2011 HMRC will be able to determine the penalties due for any failures in 2011. For example, all payments due to HMRC in respect of the March 2011 payroll should be remitted, in the usual way, to the Collector by the 19th April 2011 (for cheque payments), or 22nd April 2011 (for electronic payments). HMRC will seek a penalty when PAYE is due and paid late, i.e. after the 19th, or 22nd of the following month. The amount of penalty varies, depending on the number of defaults that arise during the year. The penalty provisions provide that the first failure during a tax year does not count as a default in relation to that tax during that tax year. However, the following table shows the percentage penalty linked to the number of defaults.

Number of defaults in tax year	Penalty charged (as percentage of total of all PAYE paid late)
1	No penalty (in most circumstances)
2 to 4	1%
5 to 7	2%
8 to 10	3%
11 or more	4%
Additional penalties where monthly or quarterly amounts not paid in full within six months	5% (additional to the penalty charges detailed above)
Further penalties where monthly or quarterly amounts remain unpaid after 12 months	5% (additional to those listed above)

HMRC will not begin to issue penalty notices until after the end of the tax year, at which point, they will obviously be in a position to see how many months'/quarters' payments were received late. Late payment warning letters may be issued by HMRC in year to raise awareness of possible late payment — but these have no statutory value. They serve as a reminder or prompt, where late payment has arisen, to put employers on notice and to draw their attention to this new penalty regime.

Impact

One of the main areas of concern will be chargeable events arising from share-based awards, in particular, where the event takes place after the payroll has been run. Historically, employers have accounted for this in the following month's remittances. HMRC will now see this as a default, because PAYE on the share award will be one month late. For instance, if PAYE should have been operated on, say, the 25th of the month (the normal payroll date), then the remittance should be made by the 19th or 22nd of the following month. This becomes a larger problem when employers are reliant on information from overseas to correctly operate PAYE on time.

Mitigation

An appeal can be made against the imposition of a penalty on the basis that there was a reasonable excuse for not making the payment or failing to make it on time. HMRC have stated that a reasonable excuse will not generally include insufficient funds, reliance on a third party, or that it is difficult to deduct on time.
Employers should now put in place a mechanism to capture payments made after the payroll has been run and include these in their monthly remittances to HMRC to ensure late payments do not prove expensive in the future.

And finally

Although these penalties may arise from late payments during the current tax year, it is understood that HMRC will not seek to raise the penalty determinations until after April 2011 when the full extent of the defaults are known. HMRC have indicated that they will apply a risk assessment approach to the issue of formal penalty notices, targeting those employers who are habitually late or cases where significant liabilities are involved.

Where employers have entered into an agreement with HMRC to apply modified PAYE arrangements within a PAYE scheme designated for tax-equalised assignees in accordance with EP Appendix 6, HMRC have confirmed that the new late payment penalties would not apply. Clients may wish to consider entering into such arrangements where possible if they have not yet done so.

Deloitte's view

HMRC was asked to disregard a PAYE failure resulting from an equity event, such as a share option exercise, which occurs after the payroll cutoff point for the month. Unfortunately, HMRC have confirmed they cannot offer a concession to deal with this and there is no indication that they will change the legislation on this.

As hard cases come to light, Deloitte will continue to make representations to HMRC in regard to this.

People to contact

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