



## HMRC'S EMPLOYER LIABILITIES & PAYMENTS ACCOUNT ERRORS

Issued 1 March 2023

Text of a letter dated 1 March 2023 sent to HMRC by ICAEW Tax Faculty commenting on HMRC's employer liabilities & payments accounts.

For questions on this representation please contact our Tax Faculty team at [taxfac@icaew.com](mailto:taxfac@icaew.com) quoting REP 21/23.

We are concerned that:

- employers have lost trust in HMRC's employer liability and payment (L&P) records due to the continuation of errors that have arisen since RTI was introduced,
- HMRC's employer L&P account figures do not agree with employers' records of liabilities and payments made,
- referrals to Charges Resolution team are not processed in a reasonable time, and
- Debt Management & Banking (DMB) continue to chase for payment after a dispute is raised.

This representation of 1 March 2023 has been prepared by the ICAEW Tax Faculty. Internationally recognised as a source of expertise, the ICAEW Tax Faculty is a leading authority on taxation and is the voice of tax for ICAEW. It is responsible for making all submissions to the tax authorities on behalf of ICAEW, drawing upon the knowledge and experience of ICAEW's membership. The Tax Faculty's work is directly supported by over 130 active members, many of them well-known names in the tax world, who work across the complete spectrum of tax, both in practice and in business. ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark the tax system and changes to it, are summarised in Appendix 1.

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## TEXT OF LETTER DATED 1 MARCH 2023 TO HMRC FROM ICAEW TAX FACULTY

### Introduction

In this letter we shall first highlight our concerns, secondly make suggestions for next steps, and thirdly we will, separately for reasons of client confidentiality, provide you with real examples that you can investigate separately. Meanwhile, in the Appendix to this letter we include some anonymised examples to illustrate our points.

### Our concerns

We are concerned that:

- employers have lost trust in HMRC's employer liability and payment (L&P) records due to the continuation of errors that have arisen since RTI was introduced,
- HMRC's employer L&P account figures do not agree with employers' records of liabilities and payments made,
- referrals to Charges Resolution team are not processed in a reasonable time, and
- Debt Management & Banking (DMB) continue to chase for payment after a dispute is raised.

The majority of employers have no faith in HMRC's records and rely on their own records. A typical member comment was:

*"I dare not look at the actual portal position, but last time I did we were erroneously showing as overpaid, and as such not being chased by the collector. Therefore, it's not likely to be high priority to spend time on this right now, especially as it would be the second time doing so."*

*"We would be able to show monthly liability reports and corresponding payments being made, including adjustments. ... we can 'prove' our Dr and Cr entries, but they don't match the portal."*

Generally, allocation of payments seems messy and inconsistent. Payments are not necessarily allocated to the month or liability to which they actually relate but against earlier apparent underpayments including interest thereon. We understand why this is the case, namely this is with the best intentions i.e. to reduce interest charges for the taxpayer, but the reallocation adds to the confusion.

Similarly, interest on apparent and actual late payments including on PAYE settlement agreements (PSA) is settled from the next PAYE/ NIC remittance so that month also becomes apparently underpaid and accrues interest.

Employer Helpline operatives are unaware of PSAs which hinders resolution.

An accurate interest calculation on a time to pay (TTP) arrangement set up via DMB, sent once the final TTP was made, did not align with the computer-generated interest charge. This created an apparent underpayment which HMRC deducted from the next month's PAYE and NIC remittance, making that month underpaid and accruing interest.

Amended P11D/ Class 1A charges are not sent to the employer to pay but are settled from the next PAYE/ NIC remittance.

HMRC's spreadsheet that is sent to employers to complete to help reconcile the two sets of figures has locked cells, omits Class 1A on terminations and shared parental leave and has no room to add notes.

HMRC appears to issue a number of different forms to collect data to facilitate the reconciliation but we were told that none of them appears to be processed when completed and receipt of the form is not acknowledged.

Payments to employees with more than one payroll ID in the same PAYE scheme, eg on both weekly and monthly earnings, are not separated in HMRC's L&P record, which, because it recognises only the latest FPS submitted, leads to apparent overpayments of PAYE (fortunately the different payroll IDs are recognised in HMRC's employee records).

We are also informed that where in month 1 an employee does not have a National Insurance number (NiNo) but in month 2 a NiNo is provided HMRC do not merge the records.

Duplication of records results in incorrect code numbers being issued and when employees query it, HMRC says that it is the employer's error.

Payments after leaving are also causing issues. HMRC's response was that the RTI data had not been submitted correctly. HMRC is now aware of the issue but no solution that we are aware of has been arrived at.

### **Next steps**

Could the term PSA be added to the "buzz words" that the helpline operatives could use to guide callers to the correct place? Could "disputed charges" etc also be included in such a taxonomy?

Resolving discrepancies should be straightforward, but in practice it is not (as noted above, even the spreadsheet that HMRC provides to assist employers does not help).

Is it possible to view a summary of payments made and the date together and where each payment is allocated with a separate report showing the amount expected from FPS submissions? If it is, please would you explain how employers and payroll agents can see these reports. If they are not available, could they be added to the employer/ payroll agent view as this would aid reconciliation given that many of the issues seem to arise from the misallocation of payments, albeit with the best of intentions as explained earlier.

From our previous correspondence we know that in some cases the number of characters in payment references is curtailed by the banking system, but as most employers pay on time, the time of payment should be a guide to where employers expect their PAYE, Class 1A, PSA, etc payments to be allocated.

We know that the DMB team chases payments even when there is a dispute raised. In one of the examples, you will be given we were specifically told there was a note on the file saying the amount due was under dispute with the charges resolution team, but it was continually chased. HMRC was repeatedly asked to stop the demands. There needs to be a quicker updating of records and consistency of records between DMB and the rest of HMRC. DMB's chasing of non-existent underpayments wastes not only taxpayers' but HMRC's and agents' time. Does clearer guidance need to be given to the telephone helpline operators about how to stop the issuing of demands? In one example the amount under dispute has been referred to an outside debt agency. How can that happen when there is a note on file saying the amount is with the charges resolution team? Does the computer system need improving so that such cases cannot arise?

HMRC needs to investigate the reason and report to the EPG the reason why EYUs/ correcting FPSs are not being processed by HMRC within a reasonable time. A reasonable time should be a month given monthly payroll cycles.

Could HMRC start acknowledging receipt of data in PAYE reconciliation cases and could they explain to the EPG the differing forms used? Could there be a degree of standardization?

We have noted the issue regarding the NiNo in month 2 above. We do know the software provider and so are surprised by this. Is this a common issue or is it caused by particular data fields being completed incorrectly? If there is a common solution could the details be provided by HMRC?

Could HMRC provide details of the payment after leaving issue to the EPG and lay out a roadmap to resolution?

HMRC helpline operators blaming employers for getting things wrong is a recurring concern that has been raised at EPG. This does not help employers to have trust in HMRC's records. It is not surprising that many employers are content to leave PAYE balances unreconciled until HMRC takes action. Employers trust their own records, but not HMRC's.

### **Examples**

[We] submitted two examples on 30 January [2023] (in both cases not only were there errors on HMRC employer L&P account but repeated internal referrals to charges resolution team had not been processed). Please see our letters of today's date [...] for more examples.

We have included examples with underpayments in the £ millions, employees threatening legal action and DMB continuing to chase and refer to debt agencies cases in dispute. One case includes a taxpayer who says they have not been able to reconcile the account since RTI was introduced. In our experience this is not uncommon.

We shall send you other examples once we have the information necessary to help you identify the PAYE schemes. All those who have provided us with examples have already asked for their cases to be referred to the Charges Resolution team – mostly more than once – and, as previously requested by you, we have informed those who have provided examples that they need to continue to pursue their cases themselves.

Please would you refer this letter to the responsible officials with whom we should welcome a meeting. That would have to be on a no names basis for taxpayers. We suggest that appropriate meetings are set up with the taxpayers and their agents to resolve these cases.

We look forward to hearing from you and we are very happy to discuss this further to help improve the system.

## APPENDIX TO LETTER

### ANONYMISED EXAMPLES OF HMRC LIABILITY AND PAYMENT ACCOUNT ERRORS

The notes below are edited comments from those submitting the examples.

#### **PAYE scheme and payroll contact details submitted as examples to HMRC on 30 January 2023**

##### **Payroll agent A**

In both cases (Employer Nos 1 & 2) not only are there errors on HMRC employer L&P account but internal referrals to charges resolution team have not been processed.

##### **EMPLOYER NO.1**

There is a difference of £411.63 more than is actually due.

The client first received an underpayment noticed dated 4 October 2022. The amount HMRC had on the record was incorrect.

On 15 November HMRC informed me that they were sending a referral to the 'Dispute reconciliation dept' with HMRC. And I requested that no further letters be sent to the client.

My client received another underpayment notice dated 16 November 2022

Another letter was received dated 13 December 2022. I rang HMRC on 5 January 2023 asking to stop the letters being sent as it was under dispute as it is not due. They told me they had done that.

My client received a letter from Debt Collection Agency 'Advantis' dated 18 January 2023. I spoke to HMRC 25 January 2023. She told me that there was a referral sent on the 5 January 2023 but has not yet been seen to. She sent another (on 25 January) to 'Debt Management RTI Dispute recon band'.

This would now be the third time HMRC have sent a referral to dispute this amount.

##### **EMPLOYER NO.2**

Dispute going back to tax year 2017/18.

Is an amount that is showing as due despite EYUs having been submitted to correct the discrepancy and repeated disputed charges referrals that HMRC say they have sent.

Our client continues to receive underpayment letters for amounts not due.

**On the following examples, PAYE scheme and payroll contact details will be submitted to HMRC by way of follow up to this letter.**

##### **EMPLOYER NO.3**

(Large employer)

I have just finished and submitted the reconciliation from 2016/17 to date (took years to do). Main problems include:

- If there was a late payment, then HMRC took part of the interest from the next PAYE/ NIC remittance which meant that month was also underpaid and accruing interest and so on and so on.
- The EYUs (as they were back then) did not flow through.
- The dashboard is less than useless and HMRC agrees as much.
- We summarised the position to HMRC via letter, in the meantime they went and played around with the years which meant all the goalposts had moved.
- Letter not accepted and we had to transpose on to their "spreadsheet". However:
  - The spreadsheet was missing "modern" aspects such as Class 1A on terminations and shared parental leave,

- The spreadsheet has locked cells,
- No room to add notes.

We manually reconciled every week/ month and added them as tabs.

- We had an occasion where our £1m PSA bill was paid (to the penny) but HMRC took some of these funds and offset them against an apparent payroll underpayment, which meant the PSA was underpaid, accruing interest and surcharges. I called the HMRC Employer Helpline and the operator had never heard of a PSA and kept saying it looked like Apprenticeship Levy.
- When we did a time to pay (TTP) via DMB they sent us an accurate interest calculation once the final TTP was made – these didn't align with the computer-generated interest charge, which created an apparent underpayment which was then deducted from the next month's PAYE & NIC remittance, making that underpaid and accruing interest.
- Amended P11D/ Class 1A charges were not sent to employer to settle but just taken from the next PAYE remittance.

HMRC needs a dedicated team to visit employers to make their dashboard account balance, and to check each quarter that its L&P a/c agrees with employer's figures. We have finally got there and just waiting for HMRC to come back and "tally", i.e., refund us the overpayments and EYUs.

## Payroll agent B

### EMPLOYER NOS 4, 5 AND 6

#### *General comments*

Main issue is trying to work out where HMRC have got credits from. They sometimes carry forward EA not used and then all of a sudden use it so when a client has made a payment for that month the payment is then left as a credit.

Also when they allocate payment, if the payment was made in say 2022/23 tax year they show it in that year's payment history, but HMRC may have allocated it back to a previous year so you have to try and find the payment in that year to find out where it has come from.

HMRC also do not allocate credit balances against months outstanding; they leave it as a credit when they could allocate it.

#### *Employer 4*

I did a reconciliation and how HMRC allocates payments was very messy. In addition, being unable to see how HMRC has allocated payments against penalties or EYU does not help. This employer had a penalty back in 2019/20 but we cannot see what credit HMRC used to settle it.

#### *Employer 5*

As for Employer 4 – this employer has a EYU and we cannot see the breakdown in credits allocated.

#### *Employer 6*

Employer made a payment in Jan 2023 of £2,976.04 which HMRC advises is allocated to month 9. It is not, it is also allocated to months 7 and 8, but they don't advise this. HMRC seems very inconsistent with how it does things; for an earlier payment they did show where it has all gone.

## Payroll agent C

### EMPLOYER NO.7

Credit on HMRC's L&P account owing to employee being paid both weekly and monthly on the same PAYE scheme. HMRC L&P account registers only the latest FPS submitted, whether weekly or monthly, therefore only one set of gross, tax and NIC figures is taken into account, resulting in apparent overpayment.

## Payroll agent D

### EMPLOYER NO.8

(A Modified payroll)

DMB continues to chase and refer to outside debt collection agency even though tax is in dispute and case has been referred to Charges Resolution team.

### EMPLOYER NO.9

(Very large employer)

Very large payroll with a number of issues including duplication of records, HMRC telling employees that employer has got it wrong and requesting corrected RTI submissions. Software provider insists submission is correct.

Multi-million pound dispute.

## APPENDIX 1

### ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see <https://goo.gl/x6UjJ5>).