

New PAYE Penalties for late payment

On 1 April 2010 new penalty provisions come into force in respect of the late payment of PAYE, Class 1, 1A and 1B NIC, student loan deductions and Construction Industry Scheme (CIS) deductions. These provisions relate to amounts due in respect of 'in year' deductions made by the employer as well as amounts assessed via determinations and amendments raised by HMRC.

Any payments of 'in year' deductions are late if they are not paid to HMRC by the due date e.g. 19th (payments by cheque) or 22nd (electronic payments) of the month; so PAYE deductions made in April 2010 must be paid to HMRC by 19 May.

HMRC may raise an 'in year' determination where a Return is due but has not been submitted and the duty charged by such a determination is still payable within 30 days of the original due date. This scenario is likely to occur when a CIS monthly Return has not been submitted forcing HMRC to raise a determination for the liability that they believe should be due. You can only displace the HMRC determination by submitting the outstanding Return but this will then crystallise the actual amount that should have been paid. This highlights the need to ensure all Returns, even where there is no liability, are submitted on time.

For all other amounts payment is due by the later of 30 days from the due date or when the assessment is made.

Where "in year" payments are concerned, the penalty charged by HMRC is dependent on the number of defaults that arise during the tax year. The Penalty provisions provide that if only one payment is missed or paid late during the year this will not be treated as a 'default' and as such will not incur a penalty charge.

However, if there are further failures to make payment(s) or indeed to make payment(s) on time, each of these further failures will be treated as a 'default' and a penalty will arise; the level of the penalty will be determined by the number of defaults. Where there are 1-3 defaults in the year a penalty of 1% of the amount outstanding or paid late will be charged. However 4-6 defaults and the penalty increases to 2%, 7-9 defaults and it increases to 3%, 10 or more and it is 4%. These penalties will still apply even if all liabilities due are paid to HMRC by the year end.

In addition to the default based penalties, a further 5% penalty will be charged for any amount that remains outstanding 6 months after the due date of payment. A further 5% is then due if the amount is still outstanding after 12 months.

For example, if you do not make the payment of the April 2010 deductions to HMRC until March 2011 (i.e. still within the tax year) and make all other payments one week late, you will be charged a 4% default penalty on the payments for May 2010 to March 2011. The April failure is not classed as a default because it is the first failure during the year but it will attract a 5% penalty as it is paid more than 6 months late. Had the payment relating to May 2010 also been paid in March 2011 this would attract a 9% penalty (4% for just being a late payment and a further 5% as it was not paid within 6 months).

Where you need to make the payment of a PAYE liability in respect of irregular items, such as a PAYE Settlement Arrangement, Class 1A NIC or an HMRC determination(s), again a penalty of 5% of the amount not paid within 30 days of the due date will be charged.

You can appeal against the imposition of a penalty on the basis that you had a reasonable excuse for not making the payment or failing to make it on time. HMRC have said that a reasonable excuse will not generally include insufficient funds or reliance on a third party.

There will also be no penalty charged if payment is late but the taxpayer has entered into a time to pay arrangement on the basis that the arrangement is adhered to. If the agreement is broken the penalty will be charged.

In exceptional circumstances HMRC can apply a special reduction to the penalty although again this does not include insufficient funds.

HMRC must assess the penalty and notify the taxpayer, stating the period to which it relates. They have the later of 2 years from the original payment date or 12 months from the end of an appeal period or date the tax was ascertained to issue the notice, with payment due in 30 days. Taxpayers can appeal against the imposition of the penalty or the amount of the penalty and the tribunal has the discretion to affirm, substitute or cancel the penalty.

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 amount of defaults are known. You should, therefore, put procedures in place now to ensure that any late payments do not prove expensive in the future.

To discuss this update further please contact us by calling [0870 166 6270](tel:08701666270) or emailing sales@abbeytax.co.uk.

