

MINIMISING THE RISKS FROM EMPLOYER COMPLIANCE REVIEWS

Because HMRC seeks to concentrate its resources in areas where it considers tax is being lost, it has increased the nature and scope of the PAYE audits it carries out, known as “Employer Compliance Reviews”.

The purpose of such audits is to confirm that PAYE has been properly operated on all earnings and payments in accordance with the rules and regulations operational, as set out in the booklet, *Employer’s Further Guide to PAYE and NICs (CWG2)*.

HMRC’s visit will be to your business premises and is likely to check:

- PAYE deduction working sheets for completeness and accuracy
- Correct use of employee codes
- Reconciliation of the records with the P35 (Employer’s annual statement)
- Correct treatment of new employees and leavers
- Cash payments where PAYE has not been operated
- Expense payments, employee benefits, and their correct disclosure on forms P11D or P9D
- Compliance with terms of any dispensation
- Compliance with sub-contractors’ rules
- Compliance with NIC regulations

HMRC will want to interview key staff, eg the business proprietor and the wages clerk, but they have no legal right to do this.

Problem areas - the following are the main areas where problems may arise:

- Gross payments to casual employees
- Payments to alleged ‘self employed’ persons
- Lump sum expenses
- Private petrol
- Spouse’s travel and subsistence
- Travel to work from home and vice versa
- Trips for purposes other than purely business, e.g. trade fairs, golf, social outings
- Home telephone
- Entertaining
- Expenses for use of home as an office
- Club subscriptions
- Goods and services provided free or below market value
- Luncheon expenses
- Clothing
- Accommodation
- Work undertaken at an employee’s home
- Medical expenses

Casual labour

There is no such thing as 'casual labour'. Any employer paying £1 a week or more to any employee without a form P45 must request a form P46 to be completed. If the employee signs that it is his or her only or main employment, then PAYE and national insurance need not be deducted unless the payment is in excess of the national insurance primary threshold, currently £89 per week. HMRC is applying this procedure strictly and, where forms P46 have not been completed, charging employers for tax and NI contributions on the grossed-up amount of these payments, often regardless of whether or not any tax has actually been lost to HMRC.

Whether or not tax or NI is payable, you must keep proper records of payments and persons paid.

Settlement

The majority of reviews result in some discrepancies being uncovered, and HMRC will usually calculate the 'lost' tax and NI over a period of six years plus the current year. This period may be extended if they suspect that deductions have been withheld deliberately. HMRC may also seek penalties, although these will normally depend on the gravity of the discrepancy and the degree of co-operation and disclosure from the employer. Often the audit investigator will be looking only for tax and possibly national insurance on the 'income' not taxed, instead of effecting a gross position. Amounts treated as benefits would not be grossed up or included in the assessment of NI underdeduction.

How can we help?

We can assist in reviewing your wage and salary records with a view to identifying possible areas of non-compliance with PAYE & NI regulations. If an audit is undertaken we can advise on, and assist in, negotiating a settlement with HMRC.

Updated: March 2006

© Garbetts Limited