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General

11.1 Employers are expected to operate systems which enable them to identify the travel expenses they pay to or for their employees. Employers who have paid travel expenses to their employees without accounting for PAYE and NICs must be able to show that they have treated those payments correctly. Where they cannot do so we will normally ask them to account for PAYE and NICs. Employers must also be able to show that forms *P11D* have been completed correctly and that they have fully complied with the terms of any dispensation.

Record keeping

11.2 Records relating to forms *P11D*, travel expenses or benefits provided to employees may be kept on paper, or electronically.

They must normally be retained:

- in their original form (for example, where an employee gives the employer a receipt to back up a signed expenses form, both items must be kept even if the information is transferred onto a computer or microfiche), and
- for at least three years after the end of the tax year to which they apply.

The records must be made available to authorised officers of HMRC on request.

Employer compliance reviews

11.3 From time to time we review employers' records to ensure that employers have accounted for the right amount of PAYE and NICs at the right time, and that they have correctly completed forms *P11D*. We may select an employer for a compliance review for a variety of reasons. A review does not necessarily mean that an employer is thought to have treated expense payments incorrectly or made incorrect returns on forms *P11D*.

11.4 Booklet Code of Practice 3 entitled *Reviews of Employers' and Contractors' Records* tells employers how we carry out our reviews. In particular, it explains employers' rights and promises that they will be treated fairly and courteously. It also promises that we will provide help where appropriate. Copies of the Code of Practice can be obtained from any HM Revenue & Customs office.

11.5 During the review we will check that an employer has:

- properly deducted and accounted for PAYE and NICs
- completed forms *P11D* correctly
- met the terms of any dispensation in place for travel expenses and benefits, and
- correctly calculated and accounted for the tax due under any PSA.

11.6 We will want to establish some basic facts such as:

- the nature of the business
- the size of the workforce
- the method of recording expense payments to employees, and
- the systems used by the employer to ensure that PAYE and NICs are accounted for, at the right time.

11.7 Where we find nothing wrong we will tell the employer and say that the review is finished. If we think there is something wrong we will inform the employer, ask for an explanation and suggest how it may be put right for the future.

Where PAYE and NICs have been lost as a result of a mistake, we will provide a computation of the amount thought to be owing, and any interest and penalties which will be charged. Leaflet IR109 *Employer compliance reviews & negotiations* explains how we calculate penalties where there has been a failure to operate PAYE correctly.

11.8 Our general approach is to:

- seek a settlement with the employer in respect of PAYE and NICs which should have been accounted for, and
- invite the employer to settle on a voluntary basis any tax recoverable from employees (other than directors) in respect of *P11D* items incorrectly reported.

11.9 Where an employer can satisfy us that:

- reasonable care was taken, and
- any underpayment of PAYE arose as a result of an error made in good faith, we may direct that the underpayment should be recovered from the employee.

Where an employer has operated proper controls and has acted in good faith, we will not seek to recover from the employer PAYE which has been lost as a result of inaccurate information provided by an employee.

Providing information to HMRC and employees

11.10 There are also penalties for failing to send forms *P11D* to us and for failing to pass the information to employees.

Where there is such a failure, we will:

- remind the employer of the obligation
- encourage compliance, and
- pursue penalties where the amount of tax is significant or the employer persists in failing to comply.

- 11.11 The employer will be asked to explain what went wrong before any penalty action is considered. We will not normally seek penalties from employers for errors such as the incorrect calculation of figures entered on forms *P11D* provided the employer has acted in good faith and the errors are few in number.
- 11.12 Where the employer has made an incorrect return of expenses and benefits on form *P11D* because an employee has provided incorrect information, we will not invite the employer to settle the liabilities if it is clear that adequate controls were in place. We will instead seek the tax from the individual employee. But if there are a large number of employee failures we may take the view that the employers' controls are inadequate.

Employers and dispensations

- 11.13 Where we discover that reimbursed travel expenses or benefits were:
- not covered by a dispensation, and
 - PAYE tax and NICs were not accounted for or the travel expenses were not included on forms *P11D* where appropriate,
- the employer will normally be regarded as having failed to correctly operate PAYE and/or correctly complete forms *P11D* - with the result that PAYE tax, NICs, interest and penalties may be sought, as appropriate, from the employer.
- 11.14 Where we find out that tax may be payable on items which were previously covered by a dispensation, for instance if the basis on which the dispensation was given has changed, we may revoke the dispensation by giving notice to the employer. Other than in exceptional circumstances, the dispensation will be revoked from the date of the notice. Where it is revoked from the date of the notice we will not take any action against employers or employees in respect of payments made under the terms of the dispensation before that date.
- 11.15 From time to time employees may be found to have overstated their expense claims. In order to correct these errors, employers should have arrangements in place to recover from their employees any sums overpaid or alternatively, to arrange payment of tax and NICs in respect of those overpayments. If adequate arrangements are not in place, we may need to revise the terms of any dispensation in order to reduce the risk of similar failures in the future.