

“ Plain speaking legal advice ”

Employers Tax Break

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HMRC STOPPED FROM CLAIMING THE SAME TAX TWICE

HM Revenue & Customs (HMRC) can no longer require an employer to pay income tax on a person's earnings where the employer has paid someone as a self-employed person and then HMRC has re-categorised them as an employee.

This is thanks to the Income Tax (Pay As You Earn) (Amendment) Regulations 2008, which came into force on the 6th April 2008.

As the law stood before, if it became apparent that the employer had got the employment status wrong and that there was an employment relationship and he was responsible for the employee's PAYE tax then HMRC had no discretion to choose as to whether the employee or the employer paid the tax. This meant that where an individual was wrongly paying tax as a self-employed person, HMRC could claim the full amount of PAYE tax from the employer as well.

Now, in certain circumstances, HMRC may direct that the employer is not liable to pay income tax on behalf of the employee. Instead, the employer's PAYE tax liability is passed to the employee, who received the payments from which PAYE tax should have been deducted.

Broadly speaking, liability will be transferred if the employer has not deducted or accounted for tax in accordance with PAYE regulations and the employee has included tax in a self-assessment or paid it on account, or deductions have been made as if he were an independent contractor.

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Therefore, even if HMRC reclassifies what the employer considered a self-employed consultant as an employee, they cannot go to the employer for the tax if the employee has already paid it. Instead, at worst, the amount of income tax that the employer should have paid on a person's earnings can be set off against the amount of income tax the employee has already paid in that income. But it should be noted that PAYE tax in excess of what the employee has paid will still remain the liability of the employer.

The new rules are subject to various conditions and triggers. Professional advice should always be sought on your own particular circumstances before taking any action.

If you would like to discuss any of the issues raised in this article then please contact Ashley Holden on 0118 977 4045 or by email to aholden@herrington-carmichael.com

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