Payments of share-based earnings made after an employment has ceased that have not been included in Form P45

Questions and answers

Updated June 2012

Introduction

From 6 April 2012 the 0T (zero T) tax code must be used on a non-cumulative basis against share-based payments (those in the form of securities, interests in securities and securities options) made to an employee after their employment has ceased, where these payments have not been included in the Form P45.

Commonly asked questions have been answered below.

1. How should tax code 0T be operated on share-based payments made to an individual after their employment has ceased, which have not been included on Form P45, in the following circumstances:

a) Where more than one share-based payment is made to an individual in the same payment period?

Where administratively practicable to do so, if one or more share-based payment is made, the payments should be added together and tax code 0T applied to the total amount.

However, where this is not administratively practicable then code 0T may be operated separately on individual payments.

This will apply equally where the payments are made from a single source, such as an employer, or more than one source, for example, an employer and another party.

For these purposes 'another party' will include any entity which did not directly employ the individual to whom the share-based payment is made. This might include share scheme administrators, an employee trust or the employer's parent company.

Examples of where it would be deemed to not be administratively practicable to add share-based payments together include:

- an individual is part of multiple share schemes which are administered separately
- relevant employee information is not available to a share scheme administrator
- the administrative systems in place cannot readily add payments of this type together

HM Revenue & Customs (HMRC) does not expect employers or share scheme administrators to actively evidence the practicability of administrative systems when operating this tax code.

b) Where a mixture of cash and share-based payments are made to an individual in the same payment period?

Where administratively practicable, cash and share-based payments should be added together and code 0T applied to the total amount.

However, where this is not administratively practicable code 0T may instead be operated separately on individual share-based payments.

In all instances where there are multiple cash payments, code 0T must be operated on the total of the cash payments made in the same payment period.

c) Where multiple cash payments are made to an individual in the same payment period?

Code 0T must be operated on the total amount of cash payments made in the same payment period.

2. Code 0T is operated on a non-cumulative basis. Is this the same as the "week 1/month 1" basis?

When a code is operated on a non-cumulative basis an employer should use week 1/month 1 of the Tax Tables on each weekly or monthly pay day. This means the current pay period's pay and tax should not be added to the previous weekly or monthly figures for pay and tax. For this purpose, "week 1/month 1" and "non-cumulative" are considered to be the same.

Whether an employer uses the week 1 or month 1 tax tables depends on the payment period that was applied whilst the individual was in employment. For example, if an individual was paid on a weekly basis whilst in employment and receives a share-based payment after leaving then tax code 0T should be operated using the Week 1 tax tables.

3. Which tax code should be used on payments made after employment has ceased if Form P45 has not yet been issued?

The last tax code that was issued during the individual's employment must be used and the payment included on Form P45. If Form P45 has been issued, Regulation 37 of the Income Tax (Pay As You Earn) Regulations 2003 applies and the correct tax code to operate on any subsequent cash and share-based payments from 6 April 2012 will be code 0T.

The employer must complete Form P45 on the day the employee ceases employment, or if that is not possible without unreasonable delay. HMRC would generally consider it unreasonable if the P45 was not completed and sent to HMRC or provided to the former employee immediately after tax and any other deductions are calculated for the ex-employees final pay period. In cases where the employer uses payroll software, this often means the point at which the next payroll process run takes place.

Further guidance can be found on the HMRC website at http://www.hmrc.gov.uk/employers/p45-employee-leaves.htm.

4. If an employer has been issued with a NT code because the employee is non-resident or not ordinarily resident does the requirement to operate code 0T override that or should the NT code still be used?

Code 0T should not be operated in circumstances where the code immediately prior to leaving employment was code NT. Instead, code NT should continue to be operated.

5. Are the rules changing regarding National Insurance Contributions (NICs) in relation to post-employment share-based payments which have not been included in Form P45?

There are no changes to the NICs rules in relation to this tax code change. The example below describes how NICs applies to post-employment share-based earnings.

Example

Assumptions

- The employee receives share based payments that are earnings, or treated as earnings under section 3 of the Social Security Contributions and Benefits Act 1992 after their employment ends.
- Employee is male and under State Pension age.
- Employee left the employment more than six weeks before the payment was made.
- Employee gets no other earnings at or around the same time.

The employer should apply a weekly earnings period and work out the NICs due on those earnings using category A (standard rate).

Amount of earnings/shares	£5000
NI category	A
Weekly Employer's Secondary Threshold (ST)	£144
Weekly Employees Primary Threshold (PT)	£146
Weekly Upper Earnings Limit (UEL)	£817
Employee main rate on earnings between the PT to UEL	12%
Employee additional rate on earnings above UEL	2%
Employer's rate - earnings above ST	13.8%

Employee NICs due

£817 – £146 x 12%	= £80.52
£5,000 - £817 x 2%	= £83.66
Total	= £164.18

Employer NICs due

£5,000 - £144 x 13.8% = £670.13

Total Employer and Employee liability = £834.31

If the employee was in contracted out employment which ended less than six weeks before the payment of share-based earnings a contracted-out NI category letter would apply.

More information about the NICs treatment of shares can be found in the National Insurance Manual - 'NIM06800 - Class 1 NICs: Employment-Related Securities' on the HMRC website at: http://www.hmrc.gov.uk/manuals/nimmanual/NIM06800.htm.
General information on NICs is available on the HMRC website at: http://www.hmrc.gov.uk/ni/index.htm.

6. If the individual believes they have paid too much tax how can HMRC assist?

The PAYE system aims to deduct the right amount of tax from individuals during the course of the tax year and is based on information that employees and employers provide to us. Code 0T may result in the incorrect amount of tax being deducted because this tax code does not take account of personal allowances, which may otherwise be available.

End of Year Reconciliation

At the end of each tax year, HMRC checks whether individuals within the PAYE system have paid the right amount of tax. If too much or too little tax has been paid a tax calculation, on form P800, will be produced and sent to the individual. This is part of the normal PAYE process and has happened each year since PAYE was introduced in 1944. It is known as End of Year Reconciliation.

If an individual has paid too much tax after End of Year Reconciliation has taken place individuals will receive a refund from HMRC.

Those individuals with more tax to pay will receive a notification from HMRC and in the vast majority of cases HMRC will collect the additional tax owed when an individual is paid at source, by altering their tax code. This is known as 'coding out' and will take place in the following tax year. For example, if an individual has underpaid tax in the tax year 2011-12 then 'coding out' will begin in the tax year 2013-14 (beginning 6 April 2013).

Refund of overpaid tax before the end of the tax year

There may be cases where individuals would suffer financial difficulty if they had to wait until the end of the tax year for End of Year Reconciliation to take place before receiving a refund of overpaid tax. HMRC recognises this and has a process that allows individuals who have received a share-based payment to receive a refund of overpaid tax before the end of the tax year.

Whether this process applies will depend on an individuals circumstances and if appropriate HMRC will use a form P54 and ask the individual to estimate their expected income for the rest of the tax year and then determine if any refund should be made.

If an individual would like a refund of overpaid tax on share-based earnings before the end of the tax year then they should contact HMRC directly using the general helpline 0845 300 0627. Alternative contact methods are available on the HMRC website at http://www.hmrc.gov.uk/contactus.

There is further information on the HMRC website regarding refunds of overpaid tax at http://www.hmrc.gov.uk/incometax/refund-reclaim.htm.