

NATIONAL INSURANCE CONTRIBUTIONS ACT 2006

INTERACTION BETWEEN NICs REGULATIONS MADE UNDER THAT ACT & THE PAYE REGULATIONS MADE UNDER SECTION 92 OF FA2006

Background

The National Insurance Contributions Act 2006 received Royal Assent 30th March 2006

The Act provides for:

- a power to make retrospective NICs regulations in consequence of retrospective tax legislation
- voiding of NIC agreements and elections in respect of retrospective NIC liability
- a power to make regulations governing the disclosure of NICs avoidance arrangements

The Finance Act 2006 received Royal Assent 19th July 2006. Section 92 of the Act provides for a retrospective charge to tax in respect of certain employee options. Section 94 then provides for the operation of PAYE in respect of the retrospective charge to tax.

NICs Regulations

The draft NICs regulations were published on 16th August 2006 for a 12 week consultation period.

The regulations provide for: -

- a retrospective NICs liability on employment income from avoidance arrangements caught by the provisions in FA2005 (Schedule 2) and FA2006 (Section 92);
- Collection and reporting of the retrospective NICs liability;

- Effect of retrospective NICs liability on contributory benefits, and statutory payments;
- Rules for disclosing NICs avoidance arrangements; and
- A statement to be included in future NIC elections to prevent transfer of retrospective secondary or employer's NICs liability to the employee.

Subject to the Parliamentary process, these regulations will come into force on 6th April 2007.

PAYE Regulations

These regulations follow the introduction of Section 94, FA 2006 which provides for PAYE to be applied prospectively on notional payments charged to tax retrospectively. The regulations, which come into force on 6th April 2007, also provide the mechanism for recovering retrospective tax and accounting for that tax through PAYE.

Accounting for NICs and PAYE

Both the PAYE and NICs collection regulations come into force on 6 April 2007 and this date determines when: -

- Pay records need to be amended;
- The PAYE tax and NICs arising from the retrospective earnings needs to be paid by. ;
- Returns reflecting the retrospective liability are due; and
- The period in which employers can recover the PAYE tax and Primary Class 1 NICs from employees.

Guidance will be issued shortly regarding the obtaining of supplementary returns and where payments and returns need to be sent. An overview of the process is as follows: -

- Pay records (Deductions Working Sheets or equivalent) in respect of the year or years in which payments retrospectively treated as earnings were

paid, need to be amended, and the PAYE tax and Class 1 NICs liability recalculated, in time to meet the statutory payment date;

- Payment is due within 14 days of the end of the tax month following the tax month in which the legislation treating the payment as earnings has effect;
- For the purpose of any payment made prior to 6th April 2007 in respect of the avoidance arrangements caught by the provisions in FA2005 (Schedule 2) and FA2006 (Section 92);, this will be the 6th April 2007 by virtue of NICs regulations and an Appointed Day Order. The due payment date will therefore be by 19th June 2007;
- Payment cannot be made electronically but should be sent to the designated Accounts Office team;
- Returns relating to retrospective earnings paid in 2006/07, and if appropriate, earlier years (separate returns), will be due before 20 May 2008;
- A new statutory return has been created and this must be sent to the designated processing office;
- Returns cannot be filed electronically
- An employer can recover the PAYE tax payable to HMRC from the employee's pay in Month 1 2007/08. Where the amount recovered is less than that due (and paid) to HMRC, the provisions of Section 222 ITEPA apply. The employee will have 90 days from 6th April 2007 to make good to the employer the tax due. Any amount not made good will be treated as earnings from the employment in 2007/08 for tax purposes and as a payment of earnings for NICs purposes on the 90th day.
- An employer can recover primary Class 1 NICs from an employee's earnings paid during the remainder of the tax year in which the legislation came into force and the following year. This means that employers can recover primary NICs due on avoidance arrangements caught by the provisions in FA2005 (Schedule 2) and FA2006 (Section 92) from any earnings paid to the employee during the 2007/08 and 2008/09 tax years..

Transitional provisions

The regulations also provide the following transitional provisions: -

- Returns relating to retrospective earnings paid in 2006/07, and if appropriate, earlier years (separate returns), will be due before 20 May 2008. A new statutory return has been created and this must be sent to the designated processing office. Returns cannot be filed electronically;
- An employer can recover the PAYE payable to HMRC from the employee's pay in Months 1 & 2 2007/08. Where the amount recovered is less than that due (and paid) to HMRC, the provisions of Section 222 ITEPA apply. The employee will have 90 days from 6th April 2007 to make good to the employer the tax due. Any amount not made good will be treated as earnings from the employment in 2007/08 for tax purposes and as a payment of earnings for NICs purposes on the 90th day;
- An employer can recover Primary Class 1 NICs from an employee's earnings for the remainder of the tax year in which the legislation has effect and the following year. They therefore have both 2007/08 and 2008/09 in which to recover any Primary NICs due
- The legislation determines a tax year to be closed once 5 April has passed. On 6 April 2007 therefore 2006/07 will be a closed year for the purposes of the collection regulations, although in practice employers will not have submitted their forms P35 nor sent in their final remittance of PAYE and NICs for 2007/08;
- If employers prefer, they may reflect the retrospective earnings paid in 2006/07 on the P35 and P14s to be submitted by 20 May 2007, and in their final 2006/07 remittance due by 19/22 April 2007. Both submission of the return and payment electronically are not disapplied in these circumstances. The regulations (and Section 222 ITEPA) relating to recovery of tax and NICs from employees are still determined by the 6 April date; and
- The PAYE and NICs due on any payment of earnings made prior to 6 April 2006 must be accounted for on a supplementary paper return and separate payment.

Further information: -

The draft regulations can be found here: -

<http://www.hmrc.gov.uk/employers/nicbill05.htm>

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