

WHAT'S NEW

- **The National Insurance Contributions Act 2006 received Royal Assent on 30 March 2006. Draft regulations using the powers in the Act were laid before Parliament on 19 February 2007;**
- **Draft regulations that extend the income tax avoidance scheme disclosure regime to NICs will be laid shortly;**
- **Draft regulations that amend the Income Tax (Pay as You Earn) Regulations 2003 (S.I. 2003/2682: “the PAYE Regulations”) will also be laid shortly;**
- **An overview of the interaction between the draft NICs regulations made under the Act and the PAYE regulations made under section 92 of Finance Act 2006 has been published today; and**
- **HMRC has also published today a summary of the comments (and HMRC’s response to those comments) on the draft NICs regulations received during the consultation period.**

Background

The National Insurance Contributions Act 2006 (NI Act 2006) contains measures to support the Government’s objectives of fairness and opportunity by ensuring all employers and employees pay the proper amount of tax and National Insurance contributions (NICs) on the rewards of employment.

The NI Act 2006 provides powers to make NICs regulations that reflect backdated anti-avoidance tax changes that take effect on or after 2 December 2004. The power will allow for NICs liability to be applied to these payments going back to 2 December 2004, if necessary.

Provisions in the NI Act 2006 also allow for consequential changes for the purposes of contributions, contributory benefit and statutory payments where appropriate. Where a NICs liability is backdated, to mirror the start date of anti-avoidance tax measures, any additional earnings on which primary NICs

are due up to the Upper Earnings Limit will count for the purposes of contributory benefit and occupational pensions. The additional earnings will also count for statutory payments purposes.

The NI Act 2006 also provides a power to extend the avoidance disclosure rules that currently apply to tax to NICs. And it will prevent the use of NIC Elections and Agreements over securities in avoidance schemes that have been targeted by any backdated NICs regulations so that employers cannot pass on the secondary NICs liability that they have tried to avoid to their employees.

THE SOCIAL SECURITY, OCCUPATIONAL PENSIONS SCHEMES AND STATUTORY PAYMENTS (CONSEQUENTIAL PROVISIONS) REGULATIONS 2007

These draft regulations are made using the powers in NI Act 2006. Their purpose is to allow payments that are retrospectively treated as earnings to also count for contributory benefit, occupational pension purposes and statutory payment purposes.

THE SOCIAL SECURITY CONTRIBUTIONS (CONSEQUENTIAL PROVISIONS) REGULATIONS 2007

These draft regulations set out how employers record retrospective earnings on pay records, how amended earnings are notified to HMRC, and how the additional contributions payable are accounted for. The regulations also set out the extent to which employers can recover additional contributions from employees.

THE SOCIAL SECURITY (CONTRIBUTIONS) (AMENDMENT No. 2) REGULATIONS 2007

These draft regulations make provisions to apply retrospective NICs liability back to 2 December 2004 on employment income from employment-related securities and securities options. They are to be made under the powers contained in Sections 1 and 2 of the NI Act 2006.

The draft regulations propose amendments to the existing National Insurance regulations. The amendments will ensure that a National Insurance contribution liability arises, from 2 December 2004 or later, on the same amount of employment income which is charged to tax by the provisions of Schedule 2 of the Finance Act (No.2) 2005 and section 92 of Finance Act 2006.

THE INCOME TAX (PAY AS YOU EARN) (AMENDMENT) REGULATIONS 2007

These Regulations amend the Income Tax (Pay as You Earn) Regulations 2003 (S.I. 2003/2682: “the PAYE Regulations”) to provide the necessary accounting and reporting mechanisms for payments which are retrospectively re-characterised as employment income for the purposes of ITEPA 2003. The first instance of payments being re-characterised in this way is to be found in section 92 of the Finance Act 2006

FINANCE ACT ISSUES

Schedule 2, Finance Act (No.2) 2005 and section 92 of Finance Act 2006 added anti-avoidance provisions to Part 7 of ITEPA 2003 which provides the tax rules for employment income from employment related shares and securities.

Section 94 Finance Act 2006 made amendments both to ITEPA and the PAYE Regulations to provide for the application of PAYE on payments

retrospectively treated as employment income (notional payments). The date on which a notional payment is deemed to have been made will normally be the date on which a Finance Act receives Royal Assent. For notional payments arising by virtue of Finance Act 2006, an Appointed Day Order will determine the date of those payments as being 6 April 2007, and not the date the Finance Act 2006 received Royal Assent.

Further information: -

The draft regulations can be found here: -

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

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