

Marginal items of pay - when to work out NICs and PAYE

This article:

- Tells you when a marginal item of pay can be included in an earnings period later than the one in which it was paid or treated as paid.
- Confirms that payments of earnings by way of securities, for example, shares and share options, are not marginal items of pay.

CWG2 Employer further guide to PAYE and National Insurance Contributions (NICs)

This article replaces the guidance in paragraph 4 of Chapter 1 of the CWG2 about late notification of marginal items of pay. The CWG2 will be amended in time for the issue of the Employer's Pack around February 2011.

When a marginal item of pay can be included in an earnings period later than the one in which it was paid or treated as paid

Occasionally, your payroll section does not get to know about certain marginal items of pay, for example, expenses, until after they have been paid or treated as paid. So they include the item in a later earnings period because it is time-consuming to have to revisit the correct earnings period and recalculate the Class 1 NICs due. HM Revenue & Customs (HMRC) will allow employers to use a later earnings period when calculating the NICs due, even on the rare occasions when such payments are notified late and the most convenient earnings period falls within the next tax year. But the marginal item of pay must be included in gross pay for the purposes of calculating NICs without any undue delay.

When a marginal item of pay must be included in the earnings period in which it was paid or treated as paid

You must allocate the payment to the correct earnings period and recalculate the NICs where the deferred calculation may have a material effect on an individual's benefit entitlement, for example, where an employee earns around the lower earnings limit.

HMRC will also ask you to include the item of pay in the correct earnings period and recalculate the NICs due where it appears that you are deferring the calculation to avoid or reduce NICs.

Are securities marginal items of pay?

'Marginal items of pay' do not include amounts paid or treated as paid by way of securities. 'Securities' is defined in section 420 of the Income Tax (Earnings and Pensions) Act 2003, it includes shares and share options.

If an item of pay is not marginal and your payroll section does not find out about the item in time to include it in the correct earnings period, your pay records must be adjusted to allocate the item to the correct earnings period.

Late payment penalties

From tax year 2010-11 HMRC employers may have to pay late payment penalties if they do not pay PAYE Income Tax, NICs, Construction Industry Scheme deductions and student loan repayments, on time and in full.

If the reason why an employer makes a payment late or does not pay in full by the due date, is as a result of an unforeseeable or exceptional event, the employer may have a reasonable excuse – if so a penalty will not be due. What is 'reasonable' is assessed based on the facts of the individual case.

For more information about late payment penalties see [PAYE/National Insurance late payment penalties](#).