

SOCIAL SECURITY (CONTRIBUTIONS, CATEGORISATION OF EARNERS AND INTERMEDIARIES) (AMENDMENT) REGULATIONS 2004 (SI 2004 No. 770)

Regulations have been laid today that will: -

- Amend National Insurance secondary legislation to reflect changes already made to tax law
- Introduce electronic filing and payments requirements for NICs which will mirror those that exist for tax
- Amend the current rules for refunding excess payments of NICs
- Extend the time limits for employers to recover primary NICs from future cash earnings in certain circumstances.
- Transfer liability for unpaid primary NICs to the employee in certain circumstances
- Introduce some minor NIC exemptions to align the tax and NICs treatment of certain payments

DETAILS

Tax Law Rewrite

The Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003) has rewritten all primary direct tax legislation dealing with the charge under Schedule E. The Income Tax (Pay As You Earn) Regulations 2003 (The PAYE Regulations 2003) have re-written secondary tax legislation dealing with the collection of tax charged under the former Schedule E.

Since ITEPA and the PAYE Regulations involved the restructuring and re-wording of many of those tax provisions on which NICs legislation currently relies, it is necessary to up date the references so that NICs legislation reflects the new structure and numbering of both ITEPA and the PAYE Regulations. The changes mean that those NICs regulations that rely on corresponding tax legislation reflect the more modern language and style of tax law.

E- filing and payment

Amendments were made to the PAYE regulations last autumn to require large and medium sized employers to file their end of year

returns electronically and large employers to make payments of PAYE tax electronically. These regulations contain provisions that replicate those requirements for NICs.

Large employers will be required to make their payments electronically from May 2004 and file their end of year returns electronically from May 2005. Medium sized employers will be required to file their end of year returns electronically from May 2006. From May 2005, cash incentives are being offered to small employers to encourage them to adopt e-filing voluntarily. All employers that pay electronically will benefit from a later due date of the 22nd of the month.

Refunding Excess NICs

The amendments made to the excess refund rules ensure that where an excess refund is due for tax years 2003/2004 onwards, any 1% that the earner is liable to pay as a result of the National Insurance Act 2002 is taken into consideration when the amount to be refunded is calculated.

Extending the time limit by one year for employers to recover primary NICs from an employee's future cash earnings

The changes will extend the period over which employers can recover primary NICs from their employees into the next tax year in the following circumstances:

- where the employee is seconded abroad.
- where the under-deduction of NICs has been caused by an error made by the employer in "good faith".

Transfer of liability for unpaid primary NICs to the employee.

The regulations enable liability for unpaid primary NICs to be transferred from the employer to the employee where the employee's NICs have not been paid, and the employee knew that the employer had neither deducted the amount due, nor paid the amount to the Inland Revenue. This mirrors similar, long-standing provisions for income tax.

Minor disregards from NICs liability.

The regulations introduce a number of minor disregards from NICs liability. Each ensures that the tax and NICs treatment of these payments are aligned.