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National Insurance

National insurance contributions (NICs) are essentially a tax on earned income. The NICs regime divides income into different classes: Class 1 contributions are payable on earnings from employment, while the profits of the self-employed are liable to Class 2 and 4 contributions.

National insurance is often overlooked yet it is the largest source of government revenue after income tax.

We highlight below the areas you need to consider and identify some of the potential problems. Please contact us for further specific advice.

Health and Social Care Levy (HSCL)

From April 2022, the Government introduced a new, UK-wide 1.25% Health and Social Care Levy, ringfenced for health and social care. This was added to all classes of National Insurance except for Class 2 and Class 3 but was repealedT from 6 November 2022. For 2023/24 rates revert to their 2021/22 levels.

Scope of NICs

Employees

Employees are liable to pay Class 1 NICs on their earnings. In addition, a further secondary contribution is due from the employer.

For 2023/24 employee contributions are only due when earnings exceed a 'primary threshold' of £242. The amount payable is 12% of the earnings above £242 up to earnings of £967 a week, the Upper Earnings Limit (UEL). In addition, there is a further2% charge on weekly earnings above the UEL. Secondary contributions are due from the employer of 13.8% of earnings above the 'secondary threshold' of £175 per week. There is no upper limit on the employer's payments.

Employer NICs for the under 21s

The rate of employer NICs for those under the age of 21 is 0%. For the 0% rate to apply the employee will need to be under 21 when the earnings are paid.

This exemption will not apply to earnings above the Upper Secondary Threshold (UST) in a pay period. The UST is set at the same amount as the UEL, which is the amount at which employees' NICs fall from 12% to 2%. The weekly UST is £967 for 2023/24(and £50,270 per annum for 2023/24. Employers will be liable to 13.8% NICs on earnings beyond this limit. The employee will still be liable to pay employee NICs.

NICs for apprentices under 25

Employer NICs are also 0% for apprentices under 25 who earn less than the UST which is £967 per week and £50,270 per annum for 2023/24. Employers are liable to 13.8% NICs on pay above the UST. Employee NICs are payable as normal.

An apprentice needs to:

- be working towards a government recognised apprenticeship in the UK which follows a government approved framework/standard
- have a written agreement, giving the government recognised apprentice framework or standard, with a start and expected completion date.

Employers need to identify relevant apprentices and generally assign them NICs category letter H to ensure the correct NICs are collected.

Employers need to ensure they amend the contributions letter when the apprenticeship ends or the employee turns 25.

NICs for Veterans

Civilian employers of veterans are to be given relief from employer NICs up to the level of the UST (currently £967 per week) for the first year of civilian employment. Under the rules:

- the relief is available through the PAYE system
- a qualifying veteran will have been a member of the Regular Armed Forces and have completed at least one day of basic training
- it will not matter when the veteran left the armed forces.

This measure applies 1 until 5 April 2024.

Benefits in kind

Employers providing benefits such as company cars for employees have a further NICs liability under Class 1A. Contributions are payable on the amount charged to income tax as a taxable benefit.

Most benefits are subject to employer's NICs. The 2023/24 rate of Class 1A is 13.8% for benefits provided.

The self-employed

NICs are due from the self-employed as follows:

- flat rate contribution (Class 2)
- variable amount based on the taxable profits of the business (Class 4).

The liability to pay Class 2 NICs arises at the end of each tax year but is generally collected together with Class 4 as part of the final self assessment payment.The amount of Class 2 NICs due is calculated based on the number of weeks of self-employment in the year and calculated at a rate of £3.45 per week for 2023/24 Self-employed individuals with profits below the Small Profits Threshold (SPT) of £6,725 for 2023/24 are not liable to Class 2 NICs but have the option to pay Class 2 NICs voluntarily at the end of the year so that they may protect their benefit rights.

Where profits are between the SPT and the Lower Profits Threshold of £12,570 there is no Class 2 to pay but they will be treated as if they have made the contributions and their rights to contributory benefits will be protected. Class 2 NICs are mandatory if profits are above £12,570.

Class 4

For 2023/24 Class 4 is payable at 9% on profits between £12,570 and £50,270 In addition, there is a further 2% for on profits above £50,270.

Class 3 voluntary contributions

Flat rate voluntary contributions are payable under Class 3 of £17.45 per week for 2023/24 (. They give an entitlement to basic retirement pension and may be paid by someone not liable for other contributions in order to maintain a full NICs record.

Class 3 contributions, which can be paid voluntarily to protect entitlement to the State Pension and Bereavement Benefit, also give entitlement to the standard rate of Maternity Allowance and contributory Employment and Support Allowance for the self-employed.

National Insurance - Employment Allowance

The Employment Allowance is available to many employers and can be offset against their employer Class 1 NICs liability. The amount of the Employment Allowance is currently £5,000.

Companies, where the director is the sole employee earning above the secondary threshold, are unable to claim the Employment Allowance.

From 6 April 2020 the Employment Allowance is restricted to those employers whose employers' NIC bill is below £100,000 in the previous tax year.

The Employment Allowance is classified as de minimis State aid (government financial support). This means it will count towards the total aid a business is entitled to under the relevant de minimis State aid cap. If a business exceeds the cap then the allowance cannot be claimed. Following the UK exit from the EU, this is now only relevant where both of the following are true:

- the business is located in Northern Ireland
- the business makes or sells goods or wholesale electricity.

There are other exceptions for employer Class 1 liabilities including liabilities arising from:

- a person who is employed (wholly or partly) for purposes connected with the employer's personal, family or household affairs. However, the allowance may be available for those employing care and support workers. Please contact us if this may be relevant to you as there are specific conditions which must be satisfied
- the carrying out of functions either wholly or mainly of a public nature (unless charitable status applies), for example, NHS services and General Practitioner services
- employer contributions deemed to arise under IR35 for personal service companies.

There are also rules to limit the employment allowance to a total of £5,000 where there are 'connected' employers. For example, two companies are connected with each other if one company controls the other company.

The allowance is limited to the employer Class 1 NICs liability if that is less than the Employment Allowance.

The allowance is claimed as part of the normal payroll process. The employer's payment of PAYE and NICs is reduced each month to the extent it includes an employer Class 1 NICs liability until the Employment Allowance limit has been reached.

Potential problems

Time of payment of contributions

Class 1 contributions are payable at the same time as PAYE ie monthly. Class 1A contributions are not due until 19 July (22nd for cleared electronic payment) after the tax year in which the benefits were provided.

It is therefore important to distinguish between earnings and benefits.

Earnings

Class 1 earnings will not always be the same as those for income tax. Earnings for NI purposes include:

- salaries and wages
- bonuses, commissions and fees
- holiday pay
- certain termination payments.

Problems may be encountered in relation to the treatment of:

- expense payments
- benefits.

Expense payments will generally be outside the scope of NI where they are specific payments in relation to identifiable business expenses. However NI is payable on round sum allowances.

Generally,benefits are not liable to Class 1 NICs. There are however some important exceptions including:

- most vouchers
- stocks and shares
- other assets which can be readily converted into cash
- the payment of an employee's liability by an employer.

Directors

Directors are employees and must pay Class 1 NICs. However directorships can give rise to specific NICs problems. For example:

- directors may have more than one directorship
- fees and bonuses are subject to NICs when they are voted or paid whichever is the earlier
- directors' loan accounts where overdrawn can give rise to a NICs liability.

We can advise on the position in any specific circumstances.

Employed or self-employed

The NICs liability for an employee is higher than for a self-employed individual with profits of an equivalent amount. Hence there is an incentive to claim to be self-employed rather than employed.

Are you employed or self-employed? How can you tell? In practice, it can be a complex area and there may be some situations where the answer is not clear.

In general terms the existence of the following factors would tend to suggest employment rather than self-employment:

- the 'employer' is obliged to offer work and the 'employee' is obliged to accept it
- a 'master/servant' relationship exists
- the job performed is an integral part of the business
- there is no financial risk for the 'employee'.

It is important to seek professional advice at an early stage and in any case prior to obtaining a written ruling from HMRC.

If HMRC discovers that someone has been wrongly treated as self-employed, they will re-categorise them as employed and are likely to seek to recover arrears of contributions from the employer.

Enforcement

HMRC carry out compliance visits in an attempt to identify and collect arrears of NICs. They may ask to see the records supporting any payments made.

HMRC has the power to collect any additional NICs that may be due for both current and prior years. Any arrears may be subject to interest and penalties.

Please contact us for advice on NICs compliance and ways to minimise the effect of an HMRC visit.

How we can help

Whether you are an employer or employee, employed or self-employed, awareness of NICs matters is vital.

HMRC have wide enforcement powers and anti-avoidance legislation available to them. Consequently, it is important to ensure that professional advice is sought so that all compliance matters are properly dealt with.

We would be delighted to advise on any compliance matters relevant to your own circumstances so please contact us.

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