

TAXREP 33/06

NATIONAL INSURANCE ACT 2006: DRAFT REGULATIONS

Memorandum submitted in November 2006 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to an invitation to comment issued in August 2006 by HMRC

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INTRODUCTION

1. We welcome the opportunity to comment on the draft regulations published on 16 August 2006 at <http://www.hmrc.gov.uk/employers/nicbill05.htm>.
2. Details about the Institute of Chartered Accountants in England and Wales and the Tax Faculty are set out in Annex A. Our Ten Tenets for a Better Tax System which we use as a benchmark are summarised in Annex B.

COMMENTS

3. Whilst we have no fundamental objections that have not been raised previously, we have the following new observations on the draft Regulations.

The Social Security, Occupational Pension Schemes and Statutory Payments (Consequential Provisions) Regulations 2006

4. We have no technical points but suggest that as a matter of good presentation consideration be given to the changes to the Northern Ireland Regs following in the same sequence as the mainland changes; in which case Regs 8 and 9 need to be reversed.

The National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2006

5. Reg. 12 at the end refers to seeing section 98C, TMA 1970 for failure to comply, but then Reg. 13 itself imposes its own penalties which though not constituting s.98C are equivalent to them. We wonder whether there is an element of duplication here.
6. In Reg. 15(5) “substitute” is spelt incorrectly.
7. We would welcome confirmation that Reg. 20(4) is sufficient to prevent two notifications of the same scheme (one for tax, one for NIC) and to prevent double penalties.
8. As a specific point, concerning holiday pay schemes approved under Sch. 3, Part X, para. 12 of the Social Security (Contributions) Regulations 2001 (SI 2001/1004), it seems to us that, as such schemes take advantage of a long-established relieving provision, and are normally notified to, and approved by, HMRC before that provision can apply, they are outside the scope of the notification provisions. Alternatively, if they are within that scope, they have already been notified as indicated above, so that no further action is necessary. We would welcome confirmation of this point.

Tax Representation

9. In the explanatory note forming part of the SI, the second reference to Part 3 should be to Part 4.

The Social Security Contributions (Consequential Provisions) Regulations 2006

10. In Reg. 4(a), should not the last inserted definition be first so that the three are in alphabetical order?
11. We would welcome confirmation that despite the wording of Regs 8(10) and (12), Extra-statutory Concession B46 “Automatic Penalties for Late Company and Employers’ and Contractors’ End-of-year Returns” will apply here as it does to standard P35s.

PCB
9.11.06

ICAEW AND THE TAX FACULTY: WHO WE ARE

The Institute of Chartered Accountants in England and Wales ('ICAEW') is the largest accountancy body in Europe, with more than 128,000 members. Three thousand new members qualify each year. The prestigious qualifications offered by the Institute are recognised around the world and allow members to call themselves Chartered Accountants and to use the designatory letters ACA or FCA.

The Institute operates under a Royal Charter, working in the public interest. It is regulated by the Department of Trade and Industry through the Accountancy Foundation. Its primary objectives are to educate and train Chartered Accountants, to maintain high standards for professional conduct among members, to provide services to its members and students, and to advance the theory and practice of accountancy, including taxation.

The Tax Faculty is the focus for tax within the Institute. It is responsible for tax representations on behalf of the Institute as a whole and it also provides various tax services including the monthly newsletter 'TAXline' to more than 11,000 members of the ICAEW who pay an additional subscription.

To find out more about the Tax Faculty and ICAEW including how to become a member, please call us on 020 7920 8646 or email us at tdtf@icaew.co.uk or write to us at Chartered Accountants' Hall, PO Box 433, Moorgate Place, London EC2P 2BJ.

THE TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. **Statutory:** tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. **Certain:** in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. **Simple:** the tax rules should aim to be simple, understandable and clear in their objectives.
4. **Easy to collect and to calculate:** a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. **Properly targeted:** when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. **Constant:** Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. **Subject to proper consultation:** other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. **Regularly reviewed:** the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. **Fair and reasonable:** the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. **Competitive:** tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99; see <http://www.icaew.co.uk/index.cfm?route=128518>.