



TAXREP 34/13

(ICAEW REP 100/13)

ICAEW TAX REPRESENTATION

NIC AND SELF EMPLOYED ENTERTAINERS

Comments submitted on 6 August 2013 by ICAEW Tax Faculty in response to HMRC consultation document *National Insurance and Self-employed Entertainers* published on 15 May 2013

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INTRODUCTION

1. ICAEW welcomes the opportunity to comment on the consultation document *[National Insurance and Self-employed Entertainers](#)* published by HM Revenue & Customs (HMRC) on 15 May 2013.
2. We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.
3. Information about the Tax Faculty and ICAEW is given below. We have also set out, in Appendix 1, the Tax Faculty's Ten Tenets for a Better Tax System by which we benchmark proposals to change the tax and NIC systems.

WHO WE ARE

4. ICAEW is a professional membership organisation, supporting over 140,000 chartered accountants around the world. Through our technical knowledge, skills and expertise, we provide insight and leadership to the global accountancy and finance profession.
5. Our members provide financial knowledge and guidance based on the highest professional, technical and ethical standards. We develop and support individuals, organisations and communities to help them achieve long-term, sustainable economic value.
6. The Tax Faculty is the voice of tax within ICAEW and is a leading authority on taxation. Internationally recognised as a source of expertise, the faculty is responsible for submissions to tax authorities on behalf of ICAEW as a whole. It also provides a range of tax services, including TAXline, a monthly journal sent to more than 8,000 members, a weekly newswire and a referral scheme.

KEY POINT SUMMARY

7. We have the following points:
 - We welcome the proposal to remove entertainers from being automatically categorised as employees for NIC.
 - In order to ensure certainty and prevent the arguments about NIC status that were common prior to the inclusion of entertainers in the Categorisation Regulations, we suggest that rather than removing entertainers altogether from the Cats Regs, the law be revised so that entertainers without a contract of service are automatically categorised as self employed for NIC.
 - The definition of entertainer needs to be reviewed to ensure that all those whom it is intended are to be treated as self employed for NIC are included.
 - Whether a higher rate of Class 2 NIC is needed for entertainers so that they qualify for jobseekers allowance when not working needs research, and testing against the downside of introducing a potential definition complexity.
 - We suggest that if a higher rate of Class 2 is extended to entertainers, consideration be given to introducing a facility for entertainers to elect into paying such higher rate.
 - The time is ripe for other job types classified as employments in the Cats Regs to be reviewed and revoked.
 - We suggest that recovery of arrears for past years should be pursued only to the extent of any Classes 2 and 4 liability that would have been due.
 - We recommend that the impact of any change on student loan repayments should be highlighted.

GENERAL POINTS

8. We welcome HMRC's proposal to remove entertainers from the scope of employed worker under the Social Security (Categorisation of Earners) Regulations 1978 (Cats Regs). We consider that this is a long overdue reform. It is consistent with the government's wish to make the tax and NIC systems more transparent; the law is probably no longer achieving its objective because benefits are less directly aligned with contributions than when the regulations were made.
9. We would also in support of the proposal cite the words reproduced in HMRC's more recent condoc on simplifying Class 2 NIC for the self-employed where on page 49 the government's explanation in 1973 for making directors pay Class 1 instead of (as previously) Class 2 is given: "... people taxed under Schedule E should pay Class 1 and those taxed under Schedule D should pay Class 2 and 4, thereby greatly simplifying the collection arrangements".
10. However, one of the virtues of the Cats Regs is that they provide certainty. Including entertainers within the Cats Regs in 1998 removed the scope for argument about status which had been prevalent before that time. Removing entertainers from the Cats Regs potentially reopens the scope for argument and dispute (although hopefully less than in 1998 given that tax and NIC are now both dealt with by one Department, ie HMRC). To prevent potential arguments and inconsistency and meet the government's objective of ensuring that entertainers who do not have a contract of service are consistently treated as self employed for NIC, we suggest that, rather than simply removing reference to entertainers from the Cats Regs, the regs be turned round so that they explicitly treat entertainers without contracts of service as self employed for NIC.
11. If all entertainers are to be self-employed for NIC unless they are engaged under a contract of service there may need to be a better definition of entertainer than that presently in the Cats Regs, failing which we are concerned that those who are on the fringes of mainstream entertainment could continue to have on-going arguments about their employment status.
12. We believe that there is a case to be made for entertainers paying a higher rate of Class 2 NIC to enable them to qualify for jobseekers allowance (JSA) (similar to the regime for share fishermen). However, we recommend that quantified research is carried out into the merits or otherwise of such a regime (including the rate of NIC, the amount of benefit, likelihood of claiming, etc) before any such decision is made.
13. Against a higher Class 2 NIC rate for entertainers is that an 'entertainers' category of Class 2 contributor would make life more complicated for self employed workers in the entertainment industry, who would have to decide – and in some cases seek and pay for advice on – whether they are 'entertainers' as defined. Introducing such a cliff edge would conflict with our preference for a simple tax/NIC system which does not impose unnecessary compliance costs (see our Ten Tenets for a Better Tax System in Appendix 1).
14. We also understand that many entertainers wish to be able to take on engagements and attend auditions at short notice. They therefore may not be considered as qualifying for JSA where they do not meet the condition of being 'available for work' (we know that for this reason many take casual employment, eg in bars and restaurants, to support themselves rather than sign on). Consequently, a higher rate of Class 2 NIC for all entertainers when in work may do no more than impose an additional cost on such individuals in return for no extra benefit when out of work, which we could not condone.
15. Perhaps as a compromise, given that Class 2 NIC is a personal liability, a higher rate for entertainers linked with JSA could be introduced for those who elect into it.

16. We consider that there are other job specific categories in the Cats Regs which are also ripe for review as to whether it continues to be appropriate to include them as deemed employees.
17. We should welcome clarification of the position relating to past years. Given that the abolition of Class 1 NIC for entertainers should and is likely to go ahead, we suggest that recovery of arrears for past years, which in many cases are likely to have arisen owing to a lack of clarity as to status, should be pursued only to the extent of any Classes 2 and 4 liability that would have been due.
18. As a specific point, we suggest that in implementing the change consideration be given to the possible impact on student loan repayments. It would probably be helpful to remind entertainers that the abolition of their liability to Class 1 NIC will obviate the need for engagers to run a payroll for them which hitherto will have enabled collection of at least some student loan repayments in-year, which henceforth will all have to be settled via self assessment.

RESPONSES TO CONSULTATION QUESTIONS

Question 1: Do you agree that current NICs treatment of entertainers under the Social Security (Categorisation of Earners) Regulations 1978 needs to be changed?

19. Yes.

Question 2: Do you agree that self-employed entertainers should be removed from the Class 1 NICs regime? Please give reasons for your answer.

20. Yes we do. As the condoc notes, the original logic underlying the regulation is no longer valid.

Question 3: Do you agree that self-employed entertainers should be placed in the Class 2 and 4 NICs regime?

21. Yes we do.

Question 4: If you answered “Yes” to Question 3, which of the two possible options discussed in this chapter do you believe should be adopted?

22. We consider that Option 4 should be adopted on the grounds of simplicity but that there is an arguable case for Option 3.

Question 5: Having considered Chapter 9, do you agree that Option 4 should be implemented as the future NICs treatment of entertainers?

23. It is not possible definitively to evaluate the alternative options numbered 3 and 4 because the level of additional Class 2 NIC under Option 3 has not been established and the impact of the loss of JSA has not been quantified under Option 4.

Question 6: Do you have any other comments you would like to make about the information contained in this consultation document, or information which you believe is relevant to this consultation?

24. It would be useful if the potential rate of additional Class 2 NIC under Option 3 and the impact of the loss of JSA under Option 4 were quantified. See also under General points above.

Question 7: Do you agree with our assessment of the Taxes impacts of Option 4? If not, please provide evidence for this.

25. We concur with the narrative in the taxes impact assessment but are unable to comment on the figures.

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APPENDIX 1

ICAEW 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 icaew.com/en/technical/tax/tax-faculty/-/media/Files/Technical/Tax/Tax%20news/TaxGuides/TAXGUIDE-4-99-Towards-a-Better-tax-system.ashx)