



## **NIC CATEGORISATION REGULATIONS: LECTURERS, TEACHERS, INSTRUCTORS, ETC**

**Comments submitted on 21 December 2011 by ICAEW Tax Faculty in response to HM Revenue & Customs consultation document Lecturers, teachers, instructors or those in a similar capacity, in relation to the Social Security (Categorisation of Earners) Regulations 1978 [and Northern Ireland equivalent] published on 7 October 2011**

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## INTRODUCTION

1. ICAEW welcomes the opportunity to comment on the consultation document Lecturers, teachers, instructors or those in a similar capacity, in relation to the Social Security (Categorisation of Earners) Regulations 1978 [and Northern Ireland equivalent] published on 7 October 2011 by HM Revenue & Customs at [http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?nfpb=true&propertyType=document&columns=1&id=HMCE\\_PROD1\\_031648](http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?nfpb=true&propertyType=document&columns=1&id=HMCE_PROD1_031648).
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 system.

## WHO WE ARE

4. ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter which obliges us to work in the public interest. ICAEW's regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the UK Financial Reporting Council. We provide leadership and practical support to over 136,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.
5. ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create 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 are pleased to welcome HMRC's proposal to repeal the Categorisation Regulations as they apply to lecturers, teachers, instructors and those in a similar capacity.
8. This is real simplification – it will both reduce legislative burdens on businesses and ease compliance.
9. It is consistent with the Government's wish to align the operational administration of tax and NICs (as evidenced by the [call for evidence](#) published on 11 July to which we responded in [TAXREP 54/11](#)).
10. And it reflects that the fact that the rationale for these regulations is less applicable now that the link between contributions and benefits is so tenuous compared to when the regulations were introduced.

11. We suggest that for similar reasons the regulations be repealed in respect of entertainers, as there is now as little justification for those rules as there is for the rules as they apply to teachers.

## RESPONSES TO SPECIFIC QUESTIONS

**Question 1: Are you aware of the Regulations and are they applied in your business sector**  
and

**Question 2: Are you able to estimate the number of individuals in your business sector to whom the Regulations are applied?**

and

**Question 3; Are you an individual delivering academic tuition to whom the Regulations are being applied and if so do you consider that they are beneficial or detrimental to you?**

and

**Question 4 As a provider of academic tuition, do you apply the Regulations and if so do you experience difficulties?**

12. We are not commenting on the foregoing questions save to say that we are aware of the regulations.

**Question 5: Do you support or oppose the repeal of this part of the Social Security (Categorisation of Earners) Regulations 1978 and why?**

and

13. We support the proposed repeal of this part of the regulations on the grounds that this is a simplification of an area of law that is complex to operate correctly. The legislation is probably not achieving its objective and we suspect that in many cases the correct application of the rules is not occurring. It is also consistent with the government's wish to make the tax (including NIC) system more transparent and the fact that benefits are less directly aligned with contributions than when the regulations were made.

**Question 6: What do you think will be the positive or negative impact if this part of the Social Security (Categorisation of Earners) Regulations 1978 is repealed?**

14. We believe repeal to be of positive benefit for the reasons given above.

**Question 7: Do you consider any other reform of this part of the Social Security (Categorisation of Earners) Regulations 1978 to be more appropriate than repeal?**

15. We consider repeal of this part of the regulations to be the only appropriate course of action.

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**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.com/~media/Files/Technical/Tax/Tax%20news/TaxGuides/taxguide\\_towards-a-better-tax-system.ashx](http://www.icaew.com/~media/Files/Technical/Tax/Tax%20news/TaxGuides/taxguide_towards-a-better-tax-system.ashx))