

TAXREP 15/00

NIC ON UNAPPROVED SHARE OPTIONS

Text of a letter sent in April 2000 to the Financial Secretary to the Treasury by the Tax Faculty of the ICAEW in response to an invitation to comment issued by the Revenue in March 2000

NIC ON UNAPPROVED SHARE OPTIONS

1. I write further to the invitation in Budget Day press release REV 3 to submit comments to you.
2. We welcome the opportunity to respond on the proposals intended to mitigate the effect on employers of the charge to NIC.
3. It is unacceptable that companies which are successful and who have enabled their employees to participate in the success that they have helped bring about should be subject to what amounts to an unpredictable penalty simply because an employee has triggered a deemed tax charge.
4. The problem here is the desire to levy tax in the form of NIC on a transaction entered into by someone other than the person liable to pay the tax, which means that the person liable for the tax, namely the employer, has no proceeds arising from that transaction to finance the impost. There is a fundamental difference between charging an employer because somebody else takes a course of action, which is the case here, and asking an employer to calculate a deduction and recover it from an employee with the employee having available some sale proceeds from which to bear the 'deduction'.
5. Levying a tax charge on the employer in these circumstances is contrary to the ten tenets proposed in our discussion document 'Towards a Better Tax System' issued in October 1999 as TAXGUIDE 4/00. By way of illustration, it is neither certain (as employers will be unable to anticipate the tax consequences with reasonable certainty in advance of granting the options), nor fair and reasonable nor competitive and if the charge is introduced other than by way of primary legislation is unlikely to be properly scrutinised by Parliament.
6. This situation is similar to other situations that are outside the control of an employer, for example non-cash vouchers provided by third parties which is also only now being addressed after the results of consultation and the advice of the Social Security Advisory Committee were ignored repeatedly by the DSS.
7. The alternative proposals attempt to address the issue and whilst in theory they provide a means of levying NIC in respect of options that are yet to be granted, as these could be made conditional on the employee indemnifying the employer for the NIC charge, they will still leave employers vulnerable as they would have to rely on the goodwill of

employees. An employer cannot force his employees to contribute to the NIC charge unless the employees agree to amend the terms of their contracts of employment or the option agreements, which for options yet to be granted is unlikely to engender good employer/employee relations and for options granted from April 1999 to date is unlikely to be worth employers even considering.

8. Therefore, whilst what is being proposed appears at first sight to be of some help it is in practice unlikely to be workable. The Government should either make the tax charge transparent by imposing it directly on the employee or, preferably, abolish the NIC charge, it seemingly having been introduced on the false premise of aligning tax and NIC.
9. We have written in similar terms to the Revenue, who wrote direct to us seeking our views.

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