



## ICAEW TAX FACULTY GUIDANCE NOTE

### TAXGUIDE 3/11

## EMPLOYER TAXES INCLUDING NATIONAL INSURANCE CONTRIBUTIONS

***Agreed note of meetings in July and November 2010 between HM Revenue & Customs and the Tax Faculty of the Institute of Chartered Accountants in England & Wales***

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### FOREWORD

- (i) As well as being represented on consultative committees hosted by HMRC, the ICAEW Tax Faculty meets bilaterally with HMRC PAYE, SA and NIC Policy and Processes to discuss technical and operational matters which are of concern. The notes in this document are an agreed note of meetings held in July and November 2010. The notes of the previous meeting in February 2010 were published as [TAXGUIDE 2/10](http://www.icaew.com/~media/Files/Technical/Tax/Tax%20news/TaxGuides/taxguide-2-10-employer-taxes-including-national-insurance-contributions.ashx) (<http://www.icaew.com/~media/Files/Technical/Tax/Tax%20news/TaxGuides/taxguide-2-10-employer-taxes-including-national-insurance-contributions.ashx>).
- (ii) Information about the Tax Faculty and ICAEW is given below. The Tax Faculty's Ten Tenets for a Better Tax System by which we benchmark the tax system are summarised in Appendix 1.

### WHO WE ARE

- (iii) The Institute operates under a Royal Charter, working in the public interest. Its regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the Financial Reporting Council. As a world leading professional accountancy body, the Institute provides leadership and practical support to over 134,000 members in more than 160 countries, working with governments, regulators and industry in order to ensure the highest standards are maintained. The Institute is a founding member of the Global Accounting Alliance with over 775,000 members worldwide.
- (iv) Our members provide financial knowledge and guidance based on the highest technical and ethical standards. They are trained to challenge people and organisations to think and act differently, to provide clarity and rigour, and so help create and sustain prosperity. The Institute ensures these skills are constantly developed, recognised and valued.
- (v) The Tax Faculty is the focus for tax within the Institute. It is responsible for technical tax submissions 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 Institute who pay an additional subscription, and a free weekly newswire.

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## NOTES OF MEETINGS

### POLICY & TECHNICAL

#### EMPLOYER-PROVIDED CHILDCARE AFTER 5 APRIL 2011

1. ICAEW noted that following the government's announcing on 3 December 2009 the limiting of tax relief to basic rate only for employees who first receive directly-contracted childcare or childcare vouchers after 5 April 2011 and publication on 19 February 2010 by HMRC of a technical note ('TN') at <http://www.hmrc.gov.uk/employers/employersupportedchildcare.pdf>, the Institute wrote to HMRC on 22 March (published as TAXREP 20/10 via <http://www.ion.icaew.com/TaxFaculty/19661>). ICAEW requested the opportunity to discuss both:
  - o the proposal in the TN under which employers will be expected to estimate at the start of the year the marginal tax band that will apply to employees who first receive directly contracted childcare or childcare vouchers after 5 April 2011. This will not necessarily give the right answer and this coupled with having to make an entry in P11D if the estimate proves to be wrong will be burdensome for employers; and
  - o ICAEW's alternative proposal to achieve the government's objective of targeting the benefit away from higher rate taxpayers, namely remove the income tax exemption, keep the NIC exemption for both employer and employee, and ignore the value when assessing entitlement to tax credits. This would not only benefit most those employees who pay standard rate NICs on their marginal earnings and who are likely to be eligible for tax credits, but also encourage employers to continue to provide these benefits.
2. HMRC replied that they had received a lot of representations on this topic. Ministers were engaged and HMRC, HM Treasury and the Department of Work and Pensions were working together to resolve the issues. (Post meeting note: FB11 legislation published on 31.3.11 retained employer estimates. We continue to make representations.)

#### NIC ON CAR MILEAGE

3. ICAEW said that the decision in the case [Total People Ltd v CIR \[2010\] UKFTT 379 \(TC\) \(12 August 2010\)](#) <http://www.bailii.org/cgi-bin/markup.cgi?doc=/uk/cases/UKFTT/TC/2010/TC00661.html&query=Total+People+&method=boolean> would appear to do no more than confirm the NICs position adopted by many employers and in particular local authorities in recent years. Such employers have calculated NICs on motoring expenses so that in months with low business miles NICs has been paid on some of the allowance because the cash value of the miles at 40p comes to less than the amounts received. It is being suggested that such calculations can now be considered on an annual basis and so the total paid to the employee in a tax year can be compared against the total business miles at 40p. ICAEW asked whether that was acceptable to HMRC. They noted that some accountants are now advising clients that where an employee has a choice to make between cash or a car the cash taken will only be subject to NICs after the business miles at 40p, less any fuel allowance already paid, have been deducted. Could HMRC comment on this?
4. HMRC said that they had been given leave to appeal the First Tier Tribunal decision in *Total People Ltd*. In the meantime, their position remained unchanged on Relevant Motoring Expenditure (RME) and lump sum allowances, and is as set out in their NI Manual, particularly [NIM05817](#) <http://www.hmrc.gov.uk/manuals/nimmanual/NIM05817.htm> and [NIM05827](#) <http://www.hmrc.gov.uk/manuals/nimmanual/NIM05827.htm>.
5. HMRC said that they would continue to consider each individual case on its own facts and merits when determining whether payments are RME within the meaning of Reg 22A.

## STAFF CANTEENS AND GIROVEND

6. *ICAEW requested clarification of why HMRC changed its position regarding staff canteens where girovend cards are used. An update to the Employment Income Manual on 28.3.08 added paragraph EIM21675 at <http://www.hmrc.gov.uk/manuals/eimanual/eim21675.htm>. In particular, what mischief was HMRC seeking to combat? ICAEW added that this question was not 'technical' in the sense of wanting to discuss whether a Girovend card can represent money's worth, but about policy given that the law has not changed and that there have been no landmark tax cases. The use of Girovend cards pre-dated by many years the change to the guidance, despite HMRC implying that they had only become aware of it recently.*
7. *HMRC said that they had not changed their position on staff canteens. They really had not been aware of the combined use of Girovend cards with salary sacrifice arrangements until shortly before they amended their guidance in March 2008. The mischief that they were trying to counter is that employer-loaded cards are equivalent to money's worth so in effect the employee is being given (taxable) money to buy lunch. HMRC confirmed that any salary sacrifice arrangement that might accompany the provision of such a card was of secondary importance compared to the provision by the employer of money's worth.*

## 'AUTOPILONS'

8. *ICAEW noted that HMRC's guidance is at paragraph EIM12977 <http://www.hmrc.gov.uk/manuals/eimanual/EIM12977.htm> and requested clarification of why, despite losing the point four years ago in SCA Packaging Ltd v CRC [2006] STC (SCD) 426, not appealing the point and losing again in Dr Joanne Clinton v CRC 2009 UKFTT 337 (TC) late last year, HMRC continued to pursue the 'autopilon' argument. ICAEW referred also to comments by the Special Commissioner and Tribunal Judge.*
9. *HMRC said that autopilons was a minor part of the judgements in the aforementioned cases. They would prefer legislation to clarify this, either in s.62 (earnings or benefits etc treated as earnings) or s.401 ITEPA 2003 (payments and benefits on termination of employment etc), but to date Ministers had not seen this as a great priority.*

## NICS HOLIDAY - NEW COMPANIES - DATE OF COMMENCEMENT

10. *ICAEW requested clarification of the rules where new companies do nothing for many months, or even years, or initial plans change or are aborted. ICAEW put forward the following scenario: Alan and Enid purchase an off-the-shelf company in September 2010 in anticipation of setting up a plumbing business of which Alan will be the main activist. The initial directors are formation agent nominees appointed on formation in May 2010. These do not count towards the first 10 employees as, even though directors, they were not employed 'for the purposes of the new business' in question. On 2 October 2010 Alan and Enid are appointed directors and they count towards the first ten employees for the purpose of NIC Holiday. The business commences on 4 January 2011 so there is only another 9 months left to take on up to 8 more qualifying employees. ICAEW asked whether HMRC agreed that this is the intended and legislated effect.*
11. *Now suppose that in the event the plumbing business never starts (eg because the bank will not lend for equipment and van). Instead from summer 2011 the company (which changes its name) starts to design and produce Christmas and birthday cards (of which, as it happens, Enid is the main activist). ICAEW asked when does the employment of the directors "for the purposes of the new business" (Christmas and birthday cards) begin. It is not on appointment as directors as that was in relation to a business which never commenced.*
12. *HMRC replied that on the basis of the facts provided in the first scenario, if the directors are employed earners for the new business from 2 October 2010 then it is correct that the initial period*

ends on 1 October 2011 so the Holiday would apply to employees taken on before this date. If the business never actually commenced because, for example, it could not get the funding, then it would not be eligible for the Holiday in respect of the directors that had been engaged.

13. In the second scenario, on the face of it, the initial period will either start when the business eventually started its card business, or at an earlier date if on the facts Enid started being an employed earner for the card business at some point before that – perhaps doing the preparatory work in setting up the new business.
14. HMRC added that it is a requirement of the Holiday that a new business starts. HMRC said that they agree that it will be necessary to consider at what point the ‘initial period’ for taking on eligible employees has started, if employees, including directors, have already been engaged in setting up the new business before it commenced. And it will be a question of fact whether activities carried out by the directors for which they were remunerated were in relation to the new business.
15. HMRC said that for the vast majority of businesses they did not expect this to cause any issue in practice. And for the genuine business situation help is available (through the Employer helpline) to allow them to decide whether they should apply for the Holiday.
16. HMRC added that as a separate point they were keen that businesses who can benefit from the Holiday take up the opportunity and wondered if there is anything that the ICAEW was able to do to help ensure businesses are aware of the relief. (Editors note: see briefing in *TAXline* October 2010 page 15 <http://www.icaew.com/en/technical/tax/tax-faculty/taxline/taxline-2010>)

#### **CLASS 1A NIC ON OVERSEAS HOLIDAY HOMES OWNED THROUGH A COMPANY** (item 11 in [TAXGUIDE 2/10](#))

17. *ICAEW asked HMRC for an update of the current position on refunds of Class 1A NIC. (Editorial note: refunds of Class 1A NIC paid are due following s.45 FA 2008 which provides there never to have been a benefit-in-kind, and therefore, in ICAEW’s view, never to have been a Class 1A NIC liability.)*
18. HMRC replied that this issue – and they were aware of only 29 affected cases – had been referred to the new Minister. (Post meeting note: See now [The Social Security \(Contributions\) \(Amendment No. 3\) Regulations 2011](#) (SI 2011 no. 797 <http://www.legislation.gov.uk/ukSI/2011/797/contents/made>). HMRC said that supporting guidance would be made available as soon as the Regs have been published. Claims must be made on or before 6 April 2015, though HMRC will contact all those who applied for tax refunds.)

#### **NIC THRESHOLDS**

19. *ICAEW said that these were now a mess, even to the extent of having divergent thresholds for employees and employers (the primary and secondary thresholds). ICAEW suggested that, in the interests of simplification, these should be tidied up, and as a start the primary and secondary thresholds not only be made the same but also aligned with the personal allowance as recommended in Martin Taylor’s report of 17.3.98, so that if the income is not taxable it will not be subject to NIC either.*
20. HMRC said that Ministers were considering NIC thresholds, amongst many other things, as part of their overall review of the personal tax system.

#### **INCREASE IN NIC RATES FROM APRIL 2011: TIMING OF LEGISLATION** (item 9 in [TAXGUIDE 2/10](#))

21. *ICAEW asked HMRC to advise when the legislation will be enacted.*

22. HMRC replied that they expected an NIC Bill in the autumn. (Post meeting note: see now NIC Act 2011 which received Royal Assent on 22.3.11.)

### **OVERSEAS ISSUES: EU REGULATIONS FROM 1 MAY 2010**

#### **CROSS-BORDER COLLECTION OF NIC** (item 5 in [TAXGUIDE 2/10](#))

23. *ICAEW asked HMRC for a progress report since the meeting in February 2010. (Editorial note: the point made at the meeting in February 2010 was, in brief, that HMRC had been taking out protective writs to secure NIC arrears cross-borders even though the new EU provisions enabling cross-border collection of NIC arrears which were due to come into force on 1 May 2010 had not come into force, and the UK does not appear in Annex 1 to the implementing regulation (EC Regulation 987/2010) which lists the countries party to agreements regarding cross border collection of contributions arrears.*
24. HMRC said that their legal advice confirmed that the bi-lateral agreements listed in Annex 1 to EC Regulation 987/2009 are not needed to enforce payment across borders because the implementing regulation itself empowers any Member State to ask any other Member State to facilitate collection of NIC and similar levies for any period provided that national time limits have not expired. HMRC's legal advice is that, like the Mutual Assistance & Recovery Directive (MARD), this Regulation enables Member States to recover debts that were incurred under laws in force prior to 1 May 2010.
25. *ICAEW asked whether HMRC would be seeking collection of NIC for a period before 1 May 2010 where there was no liability, citing by way of example a Belgian employer who sent an employee to the UK for 18 months to widen the employer's reach in the UK market. No application was made under the old Article 17 EEC Social Security Regulations 1408/71 to keep the employee in the Belgian social security system so primary NIC would have been due. Employer NIC would not have been payable because the employer had no place of business in the UK and there was no host employer on whom the secondary liability could be placed.*
26. HMRC confirmed that there is employer as well as employee liability only from 1 May 2010 and that they will not impose a liability where none existed before 1 May.
27. Editorial note: EC Regulation 987/2009 ('the implementing regulation') is at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:284:0001:0042:EN:PDF>. This implements EC Regulation 883/2004 (as amended by EC Regulation 988/2010), a consolidated version of which is at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2004R0883:20100501:EN:PDF>.

#### **E101 APPLICATIONS REJECTED UNEXPECTEDLY** (item 7 in [TAXGUIDE 2/10](#))

28. *ICAEW queried what appeared to be a revised interpretation by HMRC in specific cases of Article 16 of EC Regulation 883/2004 post 1 May 2010.*
29. HMRC confirmed that their policy approach to Article 16 is broadly the same as the approach they took to Article 17. There had been no significant change. (Post meeting note: since the meeting HMRC has sought to improve its letters explaining rejected Article 16 applications to ensure that the department's reasoning is more clearly and fully expressed.)

#### **EU REGULATIONS FROM 1 MAY 2010 – FORMS E101/A1**

30. *ICAEW requested guidance on how the E101/A1 process is to be applied for the four countries which have not yet signed up to the arrangements, namely Iceland, Lichtenstein, Norway and Switzerland.*

31. HMRC said that The Administrative Commission had recently discussed this topic and the Commission gave Member States the steer that they should operate the posting rules under Regulation 1408/71 in respect of these non-EU states. This will mean that the E101 process will continue to apply in respect of these countries. (HMRC publishes common application forms for both E101s (under 1408/71) and A1s (883/2004) on its website at <http://www.hmrc.gov.uk/cnr/osc.htm> )
32. HMRC added that they intended to make further updates to their guidance in early 2011 both in respect of 883/2004 and 1408/71 to take account of the anticipated publication by the Administrative Commission of further guides to "Hosting & Posting" – including in relation to non-EU states.

## **EU REGULATIONS FROM 1 MAY 2010 – SECONDARY NICs FOR NON-UK EMPLOYERS**

33. *ICAEW requested clarification of the secondary NICs position where the employer has presence in the EU but not in the UK.*
34. HMRC replied that where an employer has a registered office or place of business in another Member state with an employee who is subject to the legislation of the UK under Regulation 883/2004, then that employer is treated as having a registered office or place of business in the UK for the purposes of the social security legislation (section 1(6) Social Security Contributions and Benefits Act 1992 and Regulation 145 Social Security (Contributions) Regulations 2001 (SI 2001 no.1004)).
35. This means that such employers will be liable in the same way as a UK employer. The employer has the same obligations, including payment of contributions and operation of SSP and SMP that they would if they were in the UK. This can be seen in Article 21 EC Regulation 987/2009.

## **OPERATIONAL MATTERS**

### **PAYROLLING OF BENEFITS-IN-KIND – AND HMRC CARE AND MANAGEMENT GENERALLY**

#### **(a) Payrolling**

36. *ICAEW referred to their representation on HMRC's consultative committee and said that they were happy to continue helping HMRC to arrive at a mutually agreeable solution that was practical for both employers and HMRC. ICAEW reiterated a view expressed previously that a fundamental simplification of the benefits-in-kind code would be needed if a statutory regime for payrolling bik were to be a practical proposition. This would need to include wholesale dispensations for business expenses, standard rates for expenses (preferably the same as HMRC rates) and employers should not have to report payrolled bik on P11D.*
37. *ICAEW noted that HMRC was seemingly not permitting employers who did not already do so (and are willing and able) to start payrolling benefits-in-kind, and requested clarification of why.*
38. HMRC said that the review of the scope for payrolling of bik was continuing and some of the ICAEW members around the table were participating.
39. HMRC said that they had no powers to stop employers payrolling bik, but those employers, like any other, remained obliged to meet their statutory obligations, for example complete forms P11D. At the present time HMRC would not enter into individual agreements with employers to facilitate payrolling.

#### **(b) Care and management.**

40. *ICAEW suggested that if the reason behind not allowing employers who did not already do so to payroll bik was that HMRC considered that this would be offering a non-statutory concession*

forbidden following the Wilkinson case ([R v CIR ex parte Wilkinson \[2005\] UKHL 30](#) <http://www.publications.parliament.uk/pa/ld200405/ldjudgmt/jd050505/wilkin-1.htm>), then as the impact of this decision goes wider than payrolling of bik, then HMRC should review its powers of discretion and seek early Parliamentary clarification of its care and management powers with a view to restoring its ability to use common sense when administering the tax system.

41. HMRC replied that they have been reviewing and, where appropriate, legislating ESCs and had been in discussions with Ministers, and invited ICAEW to bring their suggestion to the appropriate employer consultative committee.

## **50% CODE NUMBERS**

42. *ICAEW noted that Employer Bulletin 36 (published on 9.8.10) announced that there will be no notices of coding in 2010/11 specifically for the 50% tax rate. Affected employees, e.g. 50% taxpayers with multiple employments who have been given a D0 code, would need to self-assess. Whilst these employees might welcome hanging on to their funds for longer, this would delay receipt for the cash-starved exchequer. ICAEW requested clarification of why HMRC had not created a mechanism, e.g. a code number, to ensure that income tax is deducted at the right rate for 2010/11.*
43. HMRC replied that because of the downturn in the economy the then Chancellor announced at the March 2009 Budget that the additional rate of income tax (that had been previously announced at PBR 2008) would be both increased (from 45% to 50%) and brought forward a year (from 2011-12 to 2010-11). This revised timetable, coupled with the planned migration (that started in June 2009) of 32 million customer records from the aged COP system to the new National Insurance and PAYE Service (NPS), meant that there was insufficient time to deliver the new D1 code and other supporting changes onto NPS for the first year, and that it could only be supported through tax tables.
44. This was not ideal but it did mean that monies would flow into the Exchequer earlier than would have been the case if the introduction of the additional rate was delayed until the full functionality could be provided.
45. HMRC added that most of those affected are within the scope of self assessment and so HMRC would finalise affected taxpayers' liability for 2010-11 once their self assessment tax return has been processed. Full functionality to support the additional rate would be delivered for 2011-12 starting with the approaching annual coding.
46. (Post meeting note: With effect from 6 April 2011 The PAYE Regulations have been amended by [The Income Tax \(Pay As You Earn\) \(Amendment\) Regulations 2011](#) (SI 2011 no.729 <http://www.legislation.gov.uk/ukxi/2011/729/contents/made>) to allow 50% tax code numbers and related matters – see our [newsitem dated 21.3.11](#) at <http://www.legislation.gov.uk/ukxi/2011/729/contents/made>)

## **ANNUAL PAYE SCHEMES**

47. *ICAEW referred to the fact that where no PAYE or NI is likely to be due during a tax year an employer can ask HMRC to make the payroll scheme an 'annual scheme'. Annual schemes are appropriate if, for example, there are no salaries, only benefits and expenses, or where salaries paid would not give rise to PAYE/NI deductions because they are below the thresholds. In the past they have also been appropriate for situations where the only payment in the tax year giving rise to PAYE/NI was a bonus in month 12.*
48. *If the company has an annual scheme it only needs to make an annual notification, for month 12, of nil payments due rather than monthly or quarterly ones. Under the new rules failure to notify nil PAYE/NI due can result in penalties, so not only does the annual arrangement save time but it may also save penalties. ICAEW said that HMRC had advised a member who asked for a client to be*

*put on an annual scheme that if bonuses are paid in month 12 so that PAYE/NI is due for the year, the scheme may not automatically be rolled over as an 'annual scheme' but may in future be treated as 'quarterly' or 'monthly', depending on the amount of PAYE/NI due. The member was advised to check each April whether the scheme was still being treated as 'annual'.*

49. *ICAEW requested clarification of HMRC's policy on 'annual schemes' now the new penalties are in place. If PAYE/NI is due only once a year because there is only one annual salary or bonus payment in month 12, does this mean that the scheme can no longer be registered as 'annual'? ICAEW sought clarification of HMRC's rules and criteria for annual schemes and requested confirmation that once an annual scheme is registered it can remain so unless the pattern of PAYE/NI payments changes. ICAEW noted that HMRC presumably recognises the problem in principle as one can set a 'nil return' flag for CIS purposes for six months at a time, which avoids the £100 per month penalty. ICAEW suggested that, in view of the new penalty regime, consideration be given to having a similar procedure for mainstream PAYE.*
50. HMRC replied that although there is no supporting legislation, they do allow employers to pay on an annual basis when appropriate for the reasons cited above. HMRC said that they ask employers which month that payment will become due as this is not always month 12. They then treat the employer as an annual payer, and pursue the employer at the appropriate time if a payment or 'nil' declaration is not forthcoming. Once set as an annual scheme then it will remain as such providing the payment pattern does not change, and the employer only needs to contact HMRC if they are going to start making PAYE payments monthly or quarterly.

#### **EMPLOYER AUTHORISATION TO TALK ABOUT EMPLOYEES' CODE NUMBERS ETC (item 8 in [TAXGUIDE 2/10](#))**

51. *ICAEW referred to HMRC's project: 'Authorisation Processes for unpaid Agents' relating to making it easier for those not officially appointed as agents to speak to HMRC about another person's affairs and suggested that this be extended to include employers for certain types of query.*
52. HMRC said that its Business Customers Unit (BCU) was carrying out some work looking into potential solutions which would enable staff to discuss certain employee issues directly with an employer acting as intermediary for the employee (see following item). This would involve a range of authorisation issues for employers and feedback from ICAEW members would be welcomed to inform this work.
53. HMRC also announced a new easement for employers which should deal with a substantial number of cases, namely that where an employee code number has been issued as a cumulative number and should be week 1/month 1, then the employer can operate the code as if it were a week 1/month 1 code number. This is because tax will never be under-deducted. ICAEW welcomed this easement.

#### **EMPLOYER (AND AGENT) AUTHORISATION TO TALK ABOUT EMPLOYEE'S CODE NUMBERS ETC**

54. *ICAEW referred to HMRC's announcement on 19.9.10 [www.hmrc.gov.uk/news/cast-update.htm](http://www.hmrc.gov.uk/news/cast-update.htm) about the lengthening of targets for processing paper forms, e.g. to six weeks for certain 64-8s. Although HMRC says that these forms should preferably be filed online, only the initial form can be so filed because HMRC's online system cannot cope with subsequent filings. So, if a further notification is to be made, this has to be sent in as a paper form, with at least six weeks targeted processing delay.*
55. *The online filing of agent authority to communicate with HMRC is designed on the basis of the paper form. This means, for example, that it is possible to have only one authorised agent for payroll. Increasingly, more than one agent is involved in the different aspects of payroll, such as payroll compliance, tax advisory, NICs advisory, and dispensations. ICAEW recommended that*

*HMRC should invest in making its online authorisation able to accept and automatically process initial and subsequent agent authorisations for a wide range of options. Making the online system fit for purpose in this way would in the long term save costs for HMRC as it would enable people to be mandated to communicate with HMRC in relation to the areas that they should be mandated for and obviate the need for HMRC to both process the paper forms (which in any case do not contain sufficient fields) and answer telephone calls which have to be aborted because HMRC cannot trace a mandate to communicate.*

56. *ICAEW said that a means of enabling employers as well as agents to communicate with HMRC on employer tax codes is needed, without the employer having to obtain a signed 64-8 for every employee. One of the main reasons for employers having to contact HMRC about a code number is where the employer spots that the basis of operation of an employee's code number is wrong, e.g. should not be BR or Month 1. It would be to the employee's and employer's mutual advantage to get this sorted out before the payroll run. Many employees are terrified of speaking to HMRC and want their employer to deal with the Department.*
57. *ICAEW acknowledged that HMRC was justifiably concerned about data security. ICAEW suggested that commonsense should prevail and after satisfying the more common security requirements, for example citing employer name, PAYE reference, address (and if a company and if different the Registered Office address) and the amount of the last remittance and perhaps also whether the remittance is paid quarterly or monthly to HMRC, HMRC should speak with employers rather than dismiss them because of an alleged lack of authority.*
58. *Looking ahead, ICAEW felt that the correcting of PAYE code numbers could be resolved by 'self serve', although, as noted by ICAEW in its recent response to the PAYE reform consultative document TAXREP 36/10, NPS needed to prove itself before radical additions are made.*
59. HMRC confirmed that their advisers can speak to an employer, who passes the security checks, in order to confirm the tax codes that should be used for one or a small number of employees. But HMRC advisers cannot discuss any aspects of the particulars of those codes as this clearly could breach customer confidentiality.
60. HMRC would not expect an employer to handle its employees' contact with HMRC as a matter of course. But they appreciated that there are circumstances when that is needed.
61. It is important that in these circumstances employers call the right phone line. HMRC's Employer Helpline does not have access to individual tax (NPS) records and there is a recorded message on that line to that effect. The Taxes Helpline (0845 300 0627) can speak to an employer to confirm an individual's tax code.
62. HMRC said they were continuing to look at ways to improve service to employers and agents within the constraints of their confidentiality obligations and resources.

#### **INABILITY TO OBTAIN HMRC ADVICE**

63. *ICAEW asked how one is supposed to find someone to give written advice on a technical PAYE point in the new national HMRC. It is a common complaint from members that, unless one is a business large enough to have a Customer Relationship Manager in Large Business Service, one is usually stuck with a contact centre employee who cannot advise on anything but the scripted issues, so as soon as anything technically complex arises it is very difficult to find someone in HMRC who can 'enable' you to handle your PAYE affairs correctly.*
64. *ICAEW referred to having in the past expressed concern to HMRC about how members have written to PAYE offices and then struggled to trace the progress of a query around the country, as the letter was passed from office to office as casework was re-allocated. Similarly, in relation to NIC, it is virtually impossible to obtain an answer to a technical question.*

65. *ICAEW recommended that it would help employers to get things right if they were able to obtain reasonably prompt advice on the correct treatment of payments to employees. Members generally prefer to sort out this type of matter in advance so as to avoid unnecessary future arguments and potential penalties, but it is often not easy to get an answer.*
66. *ICAEW acknowledged the existence of the Single Agent Dedicated Line (SAD line) facility which should enable telephone queries to bypass inexperienced call centre operatives, but pointed out that this will help only where a written reply is not sought.*
67. *ICAEW made the following additional points:*
- *The SAD lines when originally set up were manned by experienced and knowledgeable people: this no longer appeared to be the case.*
  - *Those who man the lines are not familiar with the cases that they have to deal with over the telephone.*
  - *HMRC considers 'urgent' to be ten working days, which is not helpful if the inquiry relates to a current transaction and necessitates a call back from HMRC or a reply to a letter.*
  - *Written advice from technical specialists cannot be divulged for 'security' reasons.*
  - *It would greatly accelerate speed of communication to be able to use email, as do most businesses in the private sector.*
  - *On the PAYE side it is impossible to contact Shipley or Cumbernauld Accounts Offices, for example to ascertain payments and request reallocations.*
  - *HMRC's 0845 telephone numbers should be cited both as geographic and 0845 numbers to save costs for the many landline subscribers whose phone packages include free calls to geographic numbers.*
  - *It is acknowledged that there is a place for helplines but there also needs to be a higher level service.*
  - *Agents are unable to speak to HMRC Employer Compliance without citing employer security numbers which they are unlikely to know.*
  - *There appears to be a training gap – HMRC call centre operatives needed to have an ethos of customer focus so that they treated callers in a positive, 'can do' manner.*
  - *Everyone wants to pay the right amount of tax at the right time in the simplest way – HMRC needs to make this happen.*
  - *The handling of NIC inquiries is getting worse: for example, HMRC Residency in Newcastle has a single telephone number answered in rotation and one can never speak twice to the same person and promises to call back are never kept.*
  - *See also item 16 which is a related point.*
  - *Problems include HMRC requesting specific employer details which agent unlikely to have before agreeing to speak to agent when agent calls about an employee,*
  - *no notes are kept on HMRC's system explaining why actions have been taken,*
  - *inability to speak to those undertaking independent/internal reviews,*
  - *corresponding by letter is traumatic,*
  - *HMRC notices frequently do not tell you the correct or any office or phone no.*
  - *Complaints are dealt with very promptly – why not the work?*
  - *Need to be able to speak to employer compliance team.*
  - *Agent dedicated lines are a move in right direction, but most conversations still end with 'you need to write in'.*
  - *Need a facility to enable an agent or employer to speak to someone who can resolve the query, failing which do not put phone numbers on letters.*
  - *It is understood that Customer Relationship Managers are to be allocated – but no-one has been told.*
  - *Agent dedicated lines are needed in each office.*
  - *Seems to be an absence of training in HMRC Residency at Newcastle.*
  - *Need a facility to contact directly competent specialists – excessive use/abuse could be controlled by a 'fair use' policy, like broadband.*

68. HMRC noted the points. They were grateful for the clarity and comprehensive nature of the material – which would provide a lot of food for thought.

### **HMRC'S APPARENT DISDAIN FOR NIC**

69. *ICAEW expressed concern that HMRC does not appear to give NIC the priority that it deserves. For example, in Agents Update no.17 (issued 13.5.10) there was no reference to the new EC Regs effective from 1.5.10. Also, in 'What's New' 19.5.10 - Contracted out guidance, all the links were to booklets which had an issue date of October 2009. And 'What's New' 6 & 12.5.10 - New NIC Regs, the SIs referred to were months old, and there are others that had never been announced in 'What's new' (even if they are on the HMRC website). And the fact that much of the NIC correspondence is still badged as from 'Inland Revenue' rather than 'HMRC'.*
70. This point was taken in conjunction with the item immediately above on 'Inability to obtain HMRC advice'. HMRC noted ICAEW's concerns.

### **FILING OF IN-YEAR FORMS**

71. *ICAEW requested confirmation that employers who will be allowed to continue to paper file P35/P14 will be allowed to continue to paper file in-year forms. Employer Bulletin 35 makes an oblique reference to this where it says in one place that 'most' employers will have to efile in-year forms next year.*
72. HMRC replied that the answer was 'Yes'.
73. Large and medium employers had been mandated to file in-year starter and leaver forms online from 6 April 2009. Small employers would be mandated to file in-year starter and leaver forms online from 6 April 2011.
74. HMRC explained that there are specific exclusions from online filing which are identified by scheme type. In addition there are other exempt schemes which cannot be identified by scheme type and for these cases the permanent e-filing inhibition signal is set on HMRC's computer. This signal prevents the issue of any penalty for non-e-filing either in-year or EOY returns online.

### **FORMS P45 AND P46**

75. *ICAEW referred to anecdotal evidence that many employers do not process P45s for their new employees even when they receive them and instead use P46 for all new employees or put all on BR.*

#### **(a) NPS procedures**

76. *ICAEW said that they had been informed (in June 2010) that where a form P45 has been issued on leaving employment and submitted to HMRC by the old employer and HMRC later received from the new employer a form P46 for the same employee, NPS is not programmed to produce a work item or send out an employment enquiry form which means the P45 and P46 will not be matched nor tax/pay details sent to the new employer who will therefore continue to operate an emergency tax code. Consequently the employee will inter alia lose the benefit of the allowances for any gap between two employments unless and until the annual reconciliation is done. ICAEW recommended that this processing lacuna should be rectified.*
77. HMRC undertook to look into and rectify this apparent omission.

## **(b) Employer compliance**

78. *ICAEW requested clarification of the action that HMRC was taking to motivate employers to follow the correct procedure and thereby ensure that the PAYE system can do its job properly of ensuring that more or less the correct amount of tax is deducted in year. ICAEW suggested that such discrepancies could be picked up if HMRC compared P14s containing emergency codes to forms P45.*
79. HMRC replied that the PAYE Regulations are quite clear about the actions to take for new employees.
80. Regulation 42 sets out the procedures for an employer to follow if an employee gives Parts 2 & 3 of form P45 to the employer on commencing employment.
81. Regulation 46 states the procedures where an employer does not receive a form P45.
82. Regulation 51 applies to late presentation of forms P45 and Regulation 52 sets out the employers duties in respect of late presentation.

## **NPS – CUSTOMER-FACING PERFORMANCE: PROCESSING OF 2009/10 P11DS AND THE ISSUING OF 2009/10 FORMS P800**

83. *ICAEW referred to the teething problems in the previous and current year (2009/10 and 2010/11) resulting in wrong code numbers many of which seemed to have arisen from ‘dirty’ data brought forward from predecessor systems and software programmed on the basis of incorrect assumptions, and slow processing of returns, and the furore caused by the release in September 2010 of forms P800 following annual reconciliations accumulated over a number of years.*
84. *ICAEW noted that whilst code numbers are a personal tax matter, they impinge on employers because they have to process code numbers when calculating net pay and answer employees’ queries. ICAEW referred to their newsitem dated 16.11.10 [www.ion.icaew.com/TaxFaculty/20999](http://www.ion.icaew.com/TaxFaculty/20999) which reported that 2009/10 P800s already issued may be incorrect because 2009/10 P11Ds had not been processed. ICAEW noted that the forms P800 that would presumably be issued following processing of those P11Ds may well be incorrect as well, as claims under section 336 ITEPA 2003 ‘Deductions for expenses: the general rule’ may not have been received or processed by HMRC.*
85. *Looking ahead and assuming that HMRC was trying to move to a fully-automated system, ICAEW asked how HMRC proposed to exclude from assessable income expenses that have been returned on P11D but which would be allowed under s.336 if a claim were made (or would be able to be covered by a dispensation if one were in place). ICAEW pointed out that in the days of local office manual processing in many cases such expenses would automatically have been treated as allowable by HMRC even in the absence of a formal dispensation as a s.336 claim attached to the P11D would have been processed at the same time. ICAEW suggested that in order to streamline the process under a national automated system the employers return of benefits and expenses should be changed so that employers enter on forms P11D only those expenses and benefits-in-kind which are not covered by s.336 or a dispensation, with a commensurate change to the employer declaration.*
86. HMRC replied that as part of continuing improvements to their internal processes and customer service, they had brought all of their PAYE customer records together onto one national database, namely the National Insurance and PAYE Service (NPS), for the first time. In bringing customer records together, they would identify people who may have income not previously taken into account or who may have had more than one personal allowance or who have been paying too much tax

87. HMRC said that this was the first time that automated tax calculations would be issued to customers. They would be dealing with two tax years at the same time, 2008-09 and 2009-10.
88. NPS provides much greater accuracy than the predecessor IT system due to its greater levels of automation and superior data matching functionality. It would automatically reconcile the tax paid against the information held on the individual employee's or pensioner's record. Individual records can be cleared in one of three ways: reconciled – balanced; reconciled – overpaid; reconciled – underpaid. Most would reconcile as balanced in any year.
89. Where an overpayment or underpayment was identified, NPS would send a calculation (on form P800) to the customer.
90. HMRC added that at the beginning of November 2010 they opened the interface between the Employer Compliance System (ECS) (which holds all the P11D information) and NPS.
91. 2010/11 would be the first year that the information would automatically generate both tax calculations and notices of coding. In previous years only the tax code for the current year was automatically updated.
92. HMRC said that they had not allowed information from ECS to flow through to NPS previously as they wanted to be sure that the tax calculations and tax codes that would be generated were correct. HMRC had completed this testing and were confident that the interface was working correctly. They were sorry that it had taken until so late in the year to get to this point and apologised for any inconvenience this may have caused. From 2011/12 they expected to start this work in July 2011 when the P11Ds are received.
93. Processing P11Ds is a normal part of the end of year reconciliation process. NPS will automatically include the information in any tax calculation for 2009-10 and update the tax code for 2010-11. This means that tax codes will be more accurate and more people pay the correct amount of tax at the right time.
94. Issuing revised tax codes during the year based on information received from employers is a normal part of the PAYE process. Tax codes would be more accurate and more people would pay the correct amount of tax at the right time.

## **NPS – SPEED OF PROCESSING**

95. *ICAEW said they understood that although returns submitted are generally processed to NPS on the night of receipt, a small percentage of employee records are not up to date because certain employer returns cannot be processed cleanly. This meant that HMRC had to take remedial action, often involving further information from the submitter, in order to process those returns. Also that difficulties encountered by HMRC in making contact and obtaining responses from submitters inevitably meant that a very small minority of returns remain unprocessed even beyond the end of the following year. ICAEW noted that HMRC has lists of common errors both for EOY forms [www.hmrc.gov.uk/payroll/year-end/errors.htm](http://www.hmrc.gov.uk/payroll/year-end/errors.htm) and for in-year forms [www.hmrc.gov.uk/pay/employees/start-leave/common-online-errors.htm](http://www.hmrc.gov.uk/pay/employees/start-leave/common-online-errors.htm). ICAEW said that they would welcome the opportunity to explore with HMRC whether there is more that can be done not only by HMRC but also employers, agents and ICAEW Tax Faculty to ensure that data submitted can all be processed on receipt.*
96. HMRC replied that as part of the Real Time Initiative underway to improve the speed and quality of information provision to support the Universal Credit, HMRC will be setting up a strand of work to examine how overall data quality can be improved.
97. This work would include consideration of how to ensure that HMRC are able to process all receipts.

## NPS AND RTI

98. ICAEW noted that the Real Time Information (RTI) project had received funding as part of the Comprehensive Spending Review settlement and therefore would proceed and that HMRC was planning further consultation as early as November 2010, combined with a series of workshops with employers and other interested groups over autumn and winter. ICAEW said they remained concerned that the new NICs and PAYE System (NPS) had not yet bedded in, and drew attention to problems over many years with HMRC's new employer IT systems that wasted employers', agents' and HMRC's time because Lord Carter of Coles' Recommendation 23 in his report dated 22 March 2006 [www.hmrc.gov.uk/budget2006/carter-review.htm](http://www.hmrc.gov.uk/budget2006/carter-review.htm) that new IT systems should be capacity tested and proven at least 12 months before going live had not been followed. ICAEW referred to their response to the PAYE review consultation paper TAXREP 36/10 [www.ion.icaew.com/TaxFaculty/20708](http://www.ion.icaew.com/TaxFaculty/20708) which said that RTI should not be implemented until:
- NPS works properly and HMRC has cleansed and reconciled all the data it holds and it can consistently produce accurate code numbers and year-end reconciliations; and
  - Not only can all employers fill online easily, but all the data submitted by employers, e.g. forms P45, P46, P14/35 and P11D, is processed quickly and accurately by HMRC.
99. HMRC said that ICAEW's concerns had been noted. There would be another opportunity to comment when they consulted on the detail of the Spending Review announcement and the RTI team would field a representative at the next meeting if a consultation were live. (Editorial note: we responded on 1.3.11 in TAXREP 17/11 to HMRC's consultation document published on 3.12.10 and attended numerous meetings with HMRC.)

## AUTOMATIC PENALTIES FOR LATE FILING

100. ICAEW noted that HMRC Brief (RCB) 24/10 dated 2.6.10 announced the withdrawal on 31.3.11 of ESC B46. ESC B46 says that a late filing penalty is not charged where the employer's and contractor's return is received by the last business day within seven days of the statutory filing date. The grounds for withdrawal given in RCB 24/10 are that 'the possible causes of late filing that [ESC B46] was intended to address can no longer arise.'. The text of the concession itself is unconditional but RCB says that it was to cover those who had taken all reasonable steps to file on time but had been prevented from doing so, for example owing to postal delays.
101. ICAEW expressed the view that the reason for the existence of ESC B46 continued on the grounds that, first, there are still various categories of employer that are allowed to continue to paper file P35/P14 and do so and, secondly, there is a cause of apparent late filing where returns are filed online, namely HMRC systems errors. Members had received many late filing penalties both this year and previously where returns had been e-filed in good time but HMRC's IT system did not treat them as having been filed, let alone on time.
102. ICAEW therefore felt that ESC B46 should be retained, and added that if HMRC considered that Wilkinson precluded this, then appropriate legislation should be enacted.
103. HMRC replied that ESC B46 was aimed principally at those who made every effort to submit their returns on time but were prevented from doing so by postal problems. With the advent of online mandation, most PAYE end-of-year returns and company tax returns must be made online, so can no longer be delayed by postal problems. There are some excepted persons who will continue to be able to file on time using paper, though these will form a minority. If a taxpayer tries to submit a paper return on time but it is delayed by problems with the post, he/she will not face a late filing penalty if HMRC accept they have a reasonable excuse for the delay. If the taxpayer disagrees with HMRC's conclusion to his claim, he can appeal to a Tribunal.

104. The end of B46 is not the removal of a safeguard. Any return made late for which there is a reasonable excuse will not attract a penalty, as now. It was unfair in its application, covering only CT, PAYE end-of-year, and end-of-year CIS returns until they ended.
105. HMRC said that they did not believe legislation to replicate its effect was possible or desirable. Following extensive consultation, they were introducing a new, harmonised regime of late payment and late filing penalties. This began with Schedules 55 & 56 FA09 and they hoped to complete it in the Autumn 2010 Finance Bill.
106. HMRC concluded that the new regime sets the dates at which late-filing penalties are incurred and will operate in a harmonised, efficient and effective manner, in a much clearer and simpler way than its predecessors

### **PAYE LATE PAYMENT INTEREST AND PENALTIES**

107. *ICAEW requested confirmation that the easement on page 7 of CWG2 [www.hmrc.gov.uk/guidance/cwg2.htm](http://www.hmrc.gov.uk/guidance/cwg2.htm) 'Late Notification of Marginal Items of Pay' would continue so that employers are not subject to interest or penalties for not processing information which they do not possess within payroll. Given that penalties and interest are now levied on PAYE remitted late to HMRC, ICAEW felt that this should be specifically extended to income tax. This point was being made in the context that PAYE late payment penalties should be focused on those who cause the real mischief, i.e. those who pay less than the full amount of PAYE they know to be due.*
108. HMRC said that this is a NICs only issue concerning late notification of marginal items of pay where it is sometimes permissible to include these in a later period providing individual benefit entitlement will not be materially affected.
109. HMRC drew attention to the replacement guidance published on 24 June 2010 at [www.hmrc.gov.uk/payee/payroll/day-to-day/marginal.pdf](http://www.hmrc.gov.uk/payee/payroll/day-to-day/marginal.pdf) (reproduced in Appendix 2) and said that CWG2 would be amended in time for the issue of the Employer's Pack around February 2011. This reflected the introduction of the late payment penalties.
110. HMRC explained that although there is no definition of a marginal item they would be expected to represent ad hoc payments that cannot be anticipated. As set out in the revised guidance it will still be possible in certain circumstances for an earnings period not to be re-opened to deal with marginal items. As a separate matter the new penalty provisions for late payments will also have to be considered, including for late NI payments that arise as a result of the late notification of marginal items of pay.
111. If a payment is made late due to a reasonable excuse then a penalty will not be charged. Each case will depend upon its facts. HMRC said that they cannot issue a blanket exemption for all late payments, although no penalty is due if there is only one failure.
112. The same late penalty provisions and considerations in respect of a reasonable excuse apply to both NICs and income tax.

### **THE SELF EMPLOYED**

#### **CLASS 2 PAYMENT DATES**

113. *ICAEW requested an update on the proposed change of Class 2 payment dates to match SA payment dates following the announcement in PBR 2008.*
114. HMRC said that with effect from April 2011, for 2011/12 and future years the statutory payment dates for Class 2 NICs would be 31 January and 31 July. Regulations would be laid in March 2011 to give these dates effect. Note that this change relates only to liabilities for 2011/12 onwards, so

contributors would still have to settle up at the end of April 2011 for Quarter 1 of calendar year 2011.

115. From April 2011 quarterly bills would no longer be issued to Class 2 NICs customers; instead two requests for payment will be issued for each tax year. For the 2011/12 tax year payment requests would be sent as follows: the period 10 April 2011 to 8 October 2011 will be issued in October 2011 and the period 9 October 2011 to 7 April 2012 will be issued in April 2012. Payment of Class 2 NICs for the two periods above must be made by 31 January 2012 and 31 July 2012 respectively. Future six monthly payment requests will be issued in October and April with payment due in the January and July. The text on the payment requests will be changed to alleviate, where possible, some of the problems with customers requesting explanations of the existing bills.
116. For customers who pay by Direct Debit (DD), the collection date of the DD will be four months in arrears rather than one month in arrears. To achieve this there will be a break in current Class 2 NICs Direct Debit collections following the collection in April 2011 (covering payment for the period March 2011 to April 2011). Collections will restart in August 2011 covering payment for April 2011 to May 2011, September's collection will cover the payment due for May 2011 to June 2011, and October's collection will cover the payment due for June 2011 to July 2011 etc. The change in collection dates has no effect on the rate of Class 2 NICs applicable.
117. HMRC added that from April 2011, to improve the collection of Class 2 NICs by DD, they were introducing an option to pay by six monthly DD. These collections will be made in January and July to align with the payment due dates.
118. To publicise these changes HMRC intended to issue:
  - o A mailshot to existing DD customers in October 2010 explaining the changes. Amendments would also be made to the DD advice note RD1456 that will be issued as part of the annual DD mail shot exercise in February/March 2011 to remind customers of the changes;
  - o A mail shot with the current Quarterly Bill in October 2010 and April 2011 explaining the changes. This mail shot will also highlight the advantages of paying NICs via DD and the variety of DD options in the hope that we can encourage the take-up of DD; and
  - o A web announcement in October 2010 to coincide with the issue of the mail shots. A "What's new" article accessible from the home page and agents' news page and/or the Working Together news page. A promo slot on Paying HMRC landing page and the Business Link site and an internet homepage slot visible under "we would like you to know". There was the possibility of further follow up articles for April 2011.

## **MISCELLANEOUS**

### **CHILD BENEFIT TAX CHARGE ON HIGHER RATE TAXPAYERS**

119. *ICAEW sought clarification of how it was intended that HMRC would calculate and collect the new tax charge to be levied on higher rate taxpayers whose households comprise or contain a parent who will not be withdrawing their child benefit claims, specifically, how would the system cope with paying benefit to A and then levying a tax charge on B? Many would not be married or civil partners so how would HMRC know that there is a couple at all (would HMRC be using tax credits information as tax credits has the same problem)? Also, what would happen if the relationship breaks up – given that child benefit is paid weekly?*
120. HMRC said that they were aware of all of these issues, but did not expect them to prevent delivery of the change.
121. The Exchequer Secretary said during the debate at Report Stage of the Finance Bill on 6 November 2010 that full details would be issued nearer the time.

122. There was an expectation that most families will be prepared to discuss these matters amongst themselves and will not try deliberately to avoid the charge. The Prime Minister had said that 'I don't start from the proposition that we're all appalling cheats and liars'.

### **DOWNLOADING HMRC MANUALS**

123. *ICAEW said that in the past it was possible to download whole HMRC Manuals as zip files. ICAEW asked if this was still possible, and if so, then would HMRC advise the webpage address containing this facility, or otherwise explain why this facility has been withdrawn.*
124. HMRC responded that low demand coupled with the time-consuming process involved in the production of the zip files had resulted in a business decision to withdraw this service. This does not affect the retention and publication of the HTML versions available from <http://www.hmrc.gov.uk/thelibrary/manuals.htm>.
125. HMRC explained that the zips are large files that are time consuming to prepare, compile and then publish. They had obtained data on the number of hits against each zip file over a 12 months period and found that the very high majority of the zips had less than 2 hits per month with only a very small number averaging between 1 and 2 a day.

PCB

5.5.11

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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-4-99-towards-a-better-tax-system.ashx>.

**MARGINAL ITEMS OF PAY - WHEN TO WORK OUT NICS AND PAYE**  
(Published on 24.6.10 by HMRC to replace guidance in CWG2)

This article:

Tells you when a marginal item of pay can be included in an earnings period later than the one in which it was paid or treated as paid.

Confirms that payments of earnings by way of securities, for example, shares and share options, are not marginal items of pay.

**CWG2 Employer further guide to PAYE and National Insurance Contributions (NICs)**

This article replaces the guidance in paragraph 4 of Chapter 1 of the CWG2 about late notification of marginal items of pay. The CWG2 will be amended in time for the issue of the Employer's Pack around February 2011.

**When a marginal item of pay can be included in an earnings period later than the one in which it was paid or treated as paid**

Occasionally, your payroll section does not get to know about certain marginal items of pay, for example, expenses, until after they have been paid or treated as paid. So they include the item in a later earnings period because it is time-consuming to have to revisit the correct earnings period and recalculate the Class 1 NICs due. HM Revenue & Customs (HMRC) will allow employers to use a later earnings period when calculating the NICs due, even on the rare occasions when such payments are notified late and the most convenient earnings period falls within the next tax year. But the marginal item of pay must be included in gross pay for the purposes of calculating NICs without any undue delay.

**When a marginal item of pay must be included in the earnings period in which it was paid or treated as paid**

You must allocate the payment to the correct earnings period and recalculate the NICs where the deferred calculation may have a material effect on an individual's benefit entitlement, for example, where an employee earns around the lower earnings limit.

HMRC will also ask you to include the item of pay in the correct earnings period and recalculate the NICs due where it appears that you are deferring the calculation to avoid or reduce NICs.

**Are securities marginal items of pay?**

'Marginal items of pay' do not include amounts paid or treated as paid by way of securities.

'Securities' is defined in section 420 of the Income Tax (Earnings and Pensions) Act 2003, it includes shares and share options.

If an item of pay is not marginal and your payroll section does not find out about the item in time to include it in the correct earnings period, your pay records must be adjusted to allocate the item to the correct earnings period.

**Late payment penalties**

From tax year 2010-11 HMRC employers may have to pay late payment penalties if they do not pay PAYE Income Tax, NICs, Construction Industry Scheme deductions and student loan repayments, on time and in full.

If the reason why an employer makes a payment late or does not pay in full by the due date, is as a result of an unforeseeable or exceptional event, the employer may have a reasonable excuse – if so a penalty will not be due. What is 'reasonable' is assessed based on the facts of the individual case.

For more information about late payment penalties see [PAYE/National Insurance late payment penalties](http://www.hmrc.gov.uk/payee/problems-inspections/late-payments.htm) at <http://www.hmrc.gov.uk/payee/problems-inspections/late-payments.htm>.

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