

Overview of the Regulations required for the payment and reporting of the Class 1A Employer NICs liabilities on termination awards and sporting testimonials with effect from 6 April 2020

Termination Payments

Clauses 1(2) and 2(2) of the National Insurance Contributions (Termination Awards and Sporting Testimonials) Act provide for Class 1A National Insurance contribution (NICs) to be payable for a tax year on a termination award that counts as employment income and is chargeable to income tax by virtue of Section 403 ITEPA 2003, but is not earnings upon which Class 1 NICs arises. These clauses are applicable to England, Scotland, Wales and Northern Ireland.

Sporting Testimonial Payments

Clauses 3(4) and 4(4) of the Act provide for Class 1A NICs to be payable for a tax year in respect of general earnings received by an earner (Sportsperson) which consist of a sporting testimonial payment that is paid to the earner by the controller of a sporting testimonial committee.

Payment and reporting of new Class 1A NICs liabilities

Our main policy objective is to bring alignment to the payment and reporting of the income tax and the Class 1A NICs liabilities arising on cash (or cash equivalent) termination awards and sporting testimonial payments.

Tax legislation already provides that the income tax liabilities are to be paid and reported to HMRC at the time they arise. This is achieved by applying the real time reporting (RTI) legislative provisions within Regulation 67B and Schedule A1 of the Income Tax (PAYE) Regulations 2003 to those income tax liabilities.

Proposed changes to the Social Security (Contributions) Regulations 2001.

It is therefore intended to apply the equivalent NICs real time reporting legislative provisions to the new Class 1A NICs liabilities. The NICs (RTI) legislation is contained within Schedules 4 and 4A of the Social Security (contributions) Regulations 2001 and it presently only applies to the payment and reporting of Class 1 NICs. That legislation will therefore require amendment through these proposed regulations to ensure that it will also apply to these specific Class 1A NICs liabilities.

At the same time we will also need to make amendments to some of the existing NICs regulations that apply to Class 1A NICs. Where necessary, amendments are needed to, regulations 70 to 80 of the Social Security (Contributions) Regulations 2001 which presently provide that Class 1A NICs liabilities are ordinarily to be paid and reported after the end of the tax year in which they arose. It is intended to dis-apply the relevant provisions within Regulations 70 to 80 from applying to Class 1A NICs liabilities arising on cash or cash equivalent termination awards and sporting testimonial payments.

It is also intended that HMRC will make the necessary amendments to Regulations 70 to 80 of the Social Security (Contributions) regulations 2001 to ensure that they are made applicable to the payment and reporting of Class 1A NICs liabilities arising on termination awards and sporting testimonial payments that are neither cash, nor cash equivalent payments.

For example: a benefit in kind arising on a car being provided to the earner for their own personal use, by the employer or sporting testimonial committee. We want the annual Class 1A NICs payment and reporting provisions to apply to those particular Class 1A NICs liabilities. This is because those Class 1A NICs liabilities can only be determined after the accompanying income tax liability has been determined, which can only be done after the tax year has ended (assuming the benefit in kind has been provided to the earner over the whole tax year).

We also want to provide via these proposed regulations that the necessary amendments are made to the Social Security (Contributions) Regulations 2001 to ensure that HMRC are able to pursue cases where the liable party has failed to report and/or pay Class 1A NICs liabilities arising on both cash/cash equivalent and other termination payments and sporting testimonial payments. This will include legislating to ensure the appropriate late payment interest and penalty provisions are applied, as well as the appropriate repayment provisions in the event that any Class 1A NICs liabilities that have been paid when not due.

It is not intended to change the existing NICs legislation which provides for a right of appeal against Class 1A NICs liabilities, as HMRC are of the view that these provisions will automatically apply to the Class 1A NICs. We do not therefore need to make any changes to our existing legislation in that respect.

If you have any questions about this note, email:
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