



FREEPORT AND INVESTMENT ZONE EMPLOYER NIC RELIEFS REPORTING REQUIREMENTS DRAFT SECONDARY LEGISLATION

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ICAEW Tax Faculty welcomes the opportunity to comment on the freeport and investment zone employer national insurance contributions (NIC) reliefs reporting requirements draft secondary legislation published by HMRC on 18 April 2024, a copy of which is available from this [link](#).

Employer reporting of postcodes for employees with special tax site NIC table letters will help HMRC monitor compliance with a system that is already complicated for employers. However, there is an existing fundamental problem with this relief, namely that, apart from remuneration details, payroll is not real time so reported location postcodes and, therefore, NIC table letters will always relate to a previous pay period. This is because special tax site eligibility for a pay period is not known for certain employees until after the pay period has ended (eg, those who start or stop working in, or work partly inside and partly outside, a freeport or investment zone). It is only after the end of the pay period that the necessary compliance eligibility checks can be performed with certainty.

We should welcome clarification in the form of increased guidance from HMRC of how employers should align employees' workplace location data to a current period's NIC calculations. Should employers adjust past pay periods' NIC calculations retrospectively? And what should happen across year ends?

We believe that payroll software will have an important role to play in this compliance reporting obligation. We suggest that HMRC liaises with software developer professionals to ensure that payroll products include eligibility "checkers" and guidance to assist employers and their payroll agents.

We recommend that HMRC publishes annual statistics for the first five years to demonstrate whether the policy and implementation has achieved the stated aims.

ICAEW

Chartered Accountants' Hall Moorgate Place London EC2R 6EA UK
T +44 (0)1908 248 250 F +44 (0)20 7920 0547 icaew.com

The Institute of Chartered Accountants in England and Wales (ICAEW) incorporated by Royal Charter (RC000246)
Registered office: Chartered Accountants' Hall Moorgate Place London EC2R 6EA UK

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GENERAL COMMENTS

1. The freeport and investment zones (here referred to collectively as special tax site) eligibility criteria are already administratively burdensome and this may be a barrier preventing many employers from taking advantage of this beneficial NIC relief. We worry that the additional postcode reporting obligation will only add to this existing burden. Therefore, by the time that the reporting obligation in the draft regulations comes into effect, there needs to be improved guidance, including interactive eligibility checkers like the one for [Plan your Shared Parental Leave and Pay](#).
2. To operate the special tax site relief, payroll needs to be working on a real-time basis. The payroll function should know or anticipate that the employer is eligible (operating in the special tax site whilst it is a special tax site) and the employee is also eligible (the 60% and 36-month rules, etc).
3. Correctly processing the data for this NIC relief is subject to overcoming a fundamental problem for employers when employees start or stop working inside a freeport or investment zone or are peripatetic (ie, work sometimes inside and sometimes outside a special tax site), namely, that payroll apart for remuneration details does not generally work on a real time basis. This means that the location information (and hence the postcode and NIC table letter) provided to payroll will always relate to a previous pay period, so HMRC should be aware that reporting in real time may not always reflect what is happening in reality.
4. We welcome the exposure of draft legislation that explains what will be required of employers, as in this case, as this allows employers to understand the conditions and to introduce processes to enable employees' location data to be provided to payroll so that the payroll software can be updated and tested. However, despite the existing requirement on employers to keep evidence that the qualifying conditions have been met, even exposing the legislation almost a year ahead will not fix the problem that the 60% test has to be applied in real time to payments of earnings in a pay period, when the location of the employee during that pay period, and therefore eligibility for the NIC relief, may not be known until that pay period has ended.
5. Not all employers will be able to align location data to current pay for all their employees where special tax site NIC table letters are used.
6. We believe that the reporting requirements for this relief do not comply with our Ten Tenets for a Better Tax System, summarised in Appendix 1, namely Tenets 2: Certain, 3: Simple and 4: Easy to collect & calculate.
7. Please would HMRC provide specific guidance on how employers should align employees' workplace location data to a current period's NIC calculations. Where an employer discovers in a subsequent pay period that a NIC adjustment is required, should the employer adjust past pay periods' NIC calculations retrospectively and submit amended PAYE RTI full payment submissions? And how should employers report across year ends? How will retrospective changes by employers be processed by HMRC's systems to avoid unnecessary contact?
8. We believe that payroll software will have an important role to play in this compliance reporting obligation. We suggest that HMRC liaises with software developer professionals to ensure that payroll products include eligibility "checkers" and guidance to assist employers and their payroll agents.
9. We recommend that HMRC publishes annual statistics for the first five years to demonstrate whether the policy and implementation has achieved the stated aims.

ANSWERS TO SPECIFIC QUESTIONS

Question 1: Do the amendments meet the stated policy aims?

10. The fundamental barrier in achieving the objective for employers who have employees who start or stop working in a special tax site or are peripatetic is that payroll does not always work on a real time basis, so the location information (and hence the postcode and NIC table letter) provided to payroll will always relate to a previous pay period. For example, overtime may be worked in one pay reference period but is not paid until the following pay reference period. Is it the policy that, if the employee meets the conditions in the current pay period but receives a payment relating to the prior pay period, the payment would benefit from the relief? Ideally there should be consistency with hours worked reporting.
11. Employees are frequently paid before the end of the pay period, so it is impossible to be sure that the conditions have been met.
12. This postcode reporting compliance obligation from tax year 2025/26 exposes the improbable situation of an employer checking eligibility in the pay period rather than at the end of it. We should welcome clarification in the form of increased guidance from HMRC of how employers should align employees' workplace location data to a current period's NIC calculations, or should employers adjust past pay periods' NIC calculations retrospectively? And what should happen across year ends?
13. We are concerned that NIC corrections in payroll processing (and reporting via RTI) will result in more RTI submissions which will have to be processed by HMRC's systems. This is likely to lead to more processing errors due to limitations in HMRC systems, and, consequently, more contact with HMRC. This affects any payroll function, for example in-house processing (by employers) or outsourced operations (by accountants, payroll agents and bureaux, bookkeepers, etc).

Question 2: Will these changes cause any reporting difficulties for freeport and investment zone employers who claim these NIC reliefs and their agents?

14. For eligible employees of eligible employers, the postcode of each employee's work location within the special tax site (not the overall postcode of the employer) will have to be gathered and entered into payroll systems for reporting via PAYE RTI full payment submissions. This is a new requirement and information that payroll functions do not currently possess. As now, for eligible employees, the appropriate NIC table letters will need to be allocated.
15. But, payroll functions, both in-house and outsourced, will need to introduce new processes to ensure that the correct work location postcode information is gathered, collated and provided in time to allocating the appropriate NIC table letters in the payroll run.
16. The exposure of draft legislation makes clear what is required and we welcome this. However, it does not allow payroll functions and software developers sufficient time to change and test amended processes well in advance of go-live.
17. As explained above, there is a fundamental difficulty for employers whose employees start or stop working in special tax sites or are peripatetic.

Question 3: Will these changes produce any other consequences for freeport and investment zone employers who claim these NIC reliefs and their agents, or for payroll software developers?

18. We suggest that payroll software should be encouraged to support payroll functions in allocating the correct NIC table letter by asking questions about employee eligibility (eg, the new hire and 60% rules, allowing for exemptions under employment law for employees with a protected characteristic). Most software products already aid employers, for example by advising them that an employee is reaching state pension age and a change of NIC table letter may be due.

19. Also, to ensure that the legislation meets its desired compliance aim, HMRC should make the postcode a mandatory field in the full payment submission when NIC table letter F, N, I, E, L, D, S or K is used. We envisage that HMRC's systems will be confused if, say, NIC table letter A is used but an employee work location postcode within a special tax site has been reported. Payroll software can also support payroll functions and HMRC by automatically removing special tax site NIC table letters and replacing with normal table letters (eg, F and N to A, K and S to C, etc) when either the employer or employee ceases to be eligible, for example when the 36-month per employee rule applies or the site ceases to be a special tax site.
20. So, exposure of draft legislation highlights compliance measures that payroll software could and should undertake but does not allow software changes to be made and tested well in advance of go live.
21. However as explained above, because payroll is expected to report employee location data for payments made in a pay period before the end of the pay period, there remains the fundamental issue that employer and employee eligibility can only truly be established after the end of the pay period. This can be likened, again, to the overtime situation above, where pay for overtime in a pay reference period is never paid in the same pay reference period as that in which the overtime was worked. This is because special tax site NIC relief applies in real time but NIC on payments are due at the time of payment, not in real time.

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](#).