Aligning NICs and income tax recovery time limits: CIOT and ATT responses

Employment Tax

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ATT and CIOT welcome moves to align National Insurance Contributions and income tax recovery time limits, while warning that reform must simplify administration, protect appeal rights and avoid reviving historic liabilities.

The ATT and CIOT have responded to an HMRC consultation (tinyurl.com/2kxy2n7r) on aligning the time limits for recovering National Insurance Contributions (NICs) with those applying to income tax.

The consultation proposed removing NICs from the scope of the Limitation Act 1980 and the Limitation (Northern Ireland) Order 1989, introducing a statutory Notice of NICs Liability, and aligning the time limits for the recovery and repayment of NICs with the corresponding income tax rules.

ATT’s response

The ATT supported closer alignment between the administration of NICs and income tax. At present, PAYE income tax and Class 1 NIC liabilities arising from the same earnings can be subject to different statutory deadlines, appeal arrangements and debt-recovery processes. This creates complexity and additional costs for employers, employees and advisers.

However, the ATT noted that aligning recovery time limits alone would not address the underlying fragmentation. It recommended that the government consider bringing PAYE income tax and related NICs liabilities within a single legislative framework, with coordinated determinations, common time limits and linked review and appeal arrangements.

If the government proceeds with a separate statutory Notice of NICs Liability as an interim measure, the ATT recommended that it should clearly identify the relevant tax years, employees, NICs classes, calculations and legal basis of the liability. Taxpayers should be able to challenge both the underlying NICs liability and matters relating to the validity, calculation and enforceability of the notice. Recovery should be suspended while a review or appeal is in progress.

The ATT was also concerned that, once a notice had been issued within the applicable time limit, HMRC could have no further fixed deadline for recovering the debt. It recommended safeguards requiring HMRC to act without unreasonable delay.

The proposal to reduce the general period for claiming repayment of NICs from six years to four years could cause employers and individuals to lose repayment rights before an error is identified. The ATT recommended transitional protection and a statutory relief mechanism for appropriate claims outside the normal period, particularly where an overpayment emerges only following litigation, an HMRC enquiry or a historic payroll correction.

The ATT also stressed that simplification must preserve employees’ rights where a decision affects their contribution record or entitlement to contributory benefits. It called for specific consideration of Scottish prescription and limitation law and recommended that HMRC engage with Scottish legal practitioners and the Law Society of Scotland.

CIOT’s response

The CIOT similarly supported the principle of aligning the administrative frameworks for NICs and income tax but considered that the reform should deliver genuine procedural alignment rather than simply adding another statutory document to the existing process.

CIOT’s preference was for a single assessment framework, or at least a combined notice, covering PAYE and NIC liabilities arising from the same facts. Related PAYE and NICs issues should also be capable of being reviewed and appealed together.

CIOT was concerned that the proposed Notice of NICs Liability would create an enforceable debt without providing a direct right of appeal. Requiring an employer to request and then appeal a separate section 8 decision could create a procedural trap. The CIOT therefore recommended that appeal rights should attach directly to the instrument establishing the liability or, if the proposed process is retained, that any timely written challenge should be treated as a request for a section 8 decision and, where appropriate, an appeal.

CIOT also called for prospective commencement provisions ensuring that liabilities that have already become irrecoverable cannot be revived. It recommended protection for historic repayment rights, consequential claims arising from later decisions, clear employee notifications and proportionate record-retention requirements.

ATT’s full response can be viewed at: tinyurl.com/2s3pe89j

CIOT’s full response can be viewed at: www.tax.org.uk/ref1777

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