4. Class 1 NICs – calculation

4.1 Introduction

Having identified the scope and nature of the earnings that attract Class 1 NICs, this chapter considers how Class 1 NICs are calculated on those earnings.

In this chapter, references to sections are to sections of the *Social Security Contributions and Benefits Act* (SSCBA) 1992 and references to regulations and to schedules are to regulations and schedules contained in *The Social Security (Contributions) Regulations* 2001 (SI 2001/1004) unless stated otherwise.

4.2 Earnings periods

4.2.1 Overview

Unlike income tax, Class 1 NICs are not assessed by reference to the cumulative earnings over a complete tax year. Instead, Class 1 NICs are calculated by reference to the earnings paid or treated as paid in an "earnings period" (see reg. 2).

The "earnings period" applicable to an employed earner will generally depend on the intervals between the payment of earnings. These will typically be on a regular weekly or monthly basis (in which case the earnings period will be weekly or monthly respectively). However, as pay intervals can deviate from this, reg. 2-8 contain several rules for determining the correct earnings period to use in more complicated scenarios (see **4.2.2** to **4.2.9**)

Where the individual is a director, the earnings period will always be an annual earnings period regardless of the pay interval. See **4.6** for more details on how this applies in practice. Special rules on earnings periods also apply to mariners (see **5.4**) and irregular harvest casuals (see **5.8**).

Whatever the applicable earnings period is, it will be aligned to the tax year, so that the general assumption is that the first day of the first earnings period in the year commences on 6 April and the subsequent periods begin immediately after the end of the preceding period.

Example

Andrea is paid on the last Friday of every month and consequently has a monthly earnings period. Her first earnings period in the tax year 2022-23 starts on Wednesday 6 April 2022 and ends on Thursday 5 May 2022 – in line with tax month one. The next earnings period begins on Friday 6 May 2022 – in line with tax month two.

When calculating the NICs due for tax month one, the secondary contributor will consider the earnings paid during the aligned monthly earnings period, i.e. the payment made on Friday 29 April 2022 will therefore fall into earnings period/tax month one and the payment on Friday 27 May 2022 will fall into earnings period/tax month two.

This simplifies administration (all earnings periods for individuals in employment in 2022-23 start on the same date) and ensures equality between different employees and employers (the rates and thresholds for 2022-23 are applied to the whole of the first payment regardless of the length of the earnings period).

The concept of "earnings periods" applies specifically to the calculation of Class 1 NICs and does not impact on the amount of earnings due or indeed on the reporting and payment of Class 1 NICs. The latter is considered in **Chapter 6**.

Law: SSCBA 1992, s. 8-9; SI 2001/1004, reg. 1-8
Guidance: NIM 08002

4.2.2 Regular pay intervals

The determination of the applicable earnings period is straightforward where the employed earner is paid at the same regular interval throughout the employment. In this case, the earnings period will be the length of the pay interval, typically a week for weekly paid employees or a month for monthly paid employees. In all circumstances, the earnings period cannot be less than a week.

Example 1

Jay is employed as a delivery driver and is paid on Mondays and Thursdays each week. In this case, his pay interval is less than a week. His earnings period will therefore be the minimum of one week.

Where there is no obvious regular pay interval, but the reality is that the employed earner is paid once in a succession of periods of the same length, reg. 7(1)(b) provides that the payments should be treated as being paid at regular intervals.

Example 2

Alana is paid on the first Monday in the calendar month. This means that, on occasion, two pay days may fall in the same tax month, e.g. 6 June-5 July 2022 (where payment is made on Monday 6 June and Monday 4 July), or there may be a month where no pay is received, e.g. 6 October-5 November 2022 (where payment is made on Monday 3 October and Monday 7 November). In these circumstances, because the pay intervals are successive and the same length, Class 1 NICs will be calculated as if there is a monthly earnings period, and the payments are made once in each month.

Where the pay interval is shorter just because:

- it falls at the end of the tax year; or
- the employed earner starts or ends employment part way through a pay period,

this is treated as a separate earnings period for Class 1 NIC purposes. However, the length of this separate earnings period will not affect the determination of the earnings period generally applicable to the employed earner.

Example 3

Amy commences employment on Monday 6 June 2022. She is paid weekly. Her regular pay day is Friday, and her first pay will be received on Friday 10 June.

The weekly earnings period for 2022-23 runs from Wednesday to Tuesday (on the basis that week one, day one is Wednesday 6 April 2022) and so her first earnings period starts on Monday 6 June 2022 and ends on Tuesday 7 June 2002. This is less than a week. However, it will be disregarded in determining her earnings period given that all payment dates are in fact on a weekly basis. She will therefore have a weekly earnings period.

Equally, additional one-off payments such as bonuses or overtime have no impact on the applicable earnings periods. (See **4.5** for how NICs are calculated when one-off payments are made.)

Law: SI 2001/1004, reg. 2, 7

4.2.3 More than one regular pay interval

The situation is more complicated when the employed earner has two or more regular pay intervals. An example of this would be a salesperson who receives basic pay on a monthly basis and commissions every six weeks, but it could also cover where employments are aggregated (see **4.7** and **4.8**) and those employments have different pay intervals.

The general rule is that where there is more than one pay interval, the earnings period will be the shortest of the intervals, subject to a minimum earnings period of one week (reg. 3(1) and reg. 6).

It is possible for HMRC (either at their own determination or on the request of the primary or secondary contributor) to issue a notice for the earnings period to be the longest pay interval where the greater amount of pay is paid in intervals other than the shortest interval (reg. 3(2A)-(3)). Where a notice is issued, it will commence on the date specified and cannot be retrospective.

Example

Eli is employed as a waiter at a local restaurant. He receives his basic pay on a monthly basis but the tips (which are subject to Class 1 NICs) are paid weekly.

Technically, the earnings period is a week, as this is the shorter of the two pay intervals. However, this is a situation where the greater amount of pay is likely to be paid over monthly as basic pay. Either Eli or his employer could apply to HMRC for the earnings period to be a month.

Law: SI 2001/1004, reg. 3, 6

4.2.4 Irregular pay intervals

Where there is not a regular pay period, or a pay period that can be treated as regular, the earnings period is determined in accordance with the rules set out in reg. 4.

In the first instance, the earnings period is the length of the period to which the pay relates, subject to a minimum of one week.

Example 1

Leanne is engaged on a fixed-term employment contract of six weeks to work as a receptionist in a hotel. If she is paid at the end of the six weeks, the earnings period will be six weeks.

Where it is not possible to determine the earnings period under this rule, the earnings period will be the longer of:

- the period from:
  - the date on which earnings in relation to the same employment were previously paid; or (if no previous payment)
  - the date the employment started,

  to the date of the payment in question; and
- one week.

Where the payment is made before the employment begins or after it ends, the earnings period will be one week.

Example 2

Kyle works at home sewing cushion covers. Every time he completes one hundred cushion covers, he delivers them to his employer and receives payment for them two days later.

Kyle works intermittently, so the pay interval is irregular. Furthermore, it is not possible to identify a period to which the pay relates. In these circumstances, the earnings period will be measured from the date of the previous payment, subject to a minimum of one week.

Law: SI 2001/1004, reg. 4, 7

4.2.5 Changing earnings periods through the tax year

Where, for example, employers shift from weekly to monthly pay, HMRC will allow the longer period to be the earnings period from the date of the change.

However, to avoid manipulation, where the longer earnings period is a year and the change in the length of the earnings period takes effect during a tax year, the length of the earnings period immediately following the change will be the number of weeks remaining in the tax year.

Law: SI 2001/1004, reg. 18
Guidance: NIM 08500, 08510