Health and Social Care Levy

Overview

From 6 April 2022, the government will introduce a new, UK-wide 1.25% Health and Social Care Levy, ringfenced for specifically for health and social care. The purpose of the levy is to help fund a package of reforms, including investment in the National Health Service and subsidised social care for qualifying individuals throughout the UK.

The Health and Social Care Levy is set to raise £11.4bn per year and will fund an investment programme said to amount to £36bn over the first 3 years. The introduction of this new tax arguably marks a major departure from the 2019 Conservative Party manifesto which guaranteed that there would be no increases in income tax, VAT or National Insurance over the lifetime of this parliament.

Health and Social Care reforms - England

Specific to England, a new cap will be introduced, limiting the total cost liability for anyone paying for care home accommodation and personal care, so that no-one in England should have to pay more than £86,000 in care costs over the course of their lifetime.

There will also be changes to the limit on savings which individuals can retain when facing a move into care whilst accessing state benefits. Currently there is a 'cliff-edge' cut-off where the individual has savings of £23,250 and this is to be replaced with a taper for those with savings between £20,000 and £100,000.

In addition, the social care workforce is to receive new training and qualification opportunities which are yet to be specified.

Health and Social Care reforms - devolved administrations

Scotland, Wales and Northern Ireland each currently have their own systems, but the Government has stated that it will consult with the devolved administrations on 'how improvements may also be made to their systems', the outcome of which will (though details have not yet been announced) determine the how the overall levy funds which will be shared out between the administrations.

Transitional arrangements for 2022-23

For 2022-23 the Health and Social Care Levy will be applied as an increase to National Insurance contributions (NICs). From 6 April 2023 it will become legislatively separate and will be collected by employers through payroll for employees and via self assessment tax returns for the self-employed.

The Health and Social Care Levy Act 2021 received Royal Assent on 20 October 2021 and makes transitional provisions that amend Part 1 of the Social Security Contributions and Benefits Act 1992 (and the Northern Ireland equivalent) for the 2022-23 tax year and applies a temporary 1.25% increase to each of the qualifying NICs (Class 1, Class 1A, Class 1B and Class 4) rates. Class 2 and Class 3 NICs rates are unaffected.

Note that the increase will apply to both employees' and employers' NICs, so that the total increase across employment will be 2.5%. For employees, the additional 1.25% will apply to all earnings above the Primary Threshold, including those above the Upper Earnings Limit. Similarly, for the self-employed, the increase will apply to all profits above the lower profit threshold.

The transitional increase to the main and additional rates of NICs will take effect from 6 April 2022 and will apply for the 2022-23 tax year only.

Individuals above State Pension age (for whom the current rate of employees' NICs is 0%) will not be affected by the temporary increase to NICs for 2022-23, but will be liable to pay the separate levy from 6 April 2023.

National Insurance contributions rates for 2022-23

For the employed:

- Employees' NICs on earnings over the Primary Threshold and up to the Upper Earnings Limit (increased from 12%) **13.25%**
- Employees' NICs on earnings above the Upper Earnings Limit (increased from 2%) **3.25%**
- Employers' NICs over the Secondary Threshold (increased from 13.8%) **15.05%**

For the self-employed:

- On profit over the lower threshold (increased from 9%) **10.25%**
- On profit over the upper threshold (increased from 2%) **3.25%**

Income tax on dividends

Though not strictly part of the levy, where the dividend allowance is exceeded, the rates of dividend tax will also be increased by 1.25% from 6 April 2022 to help fund the package of reforms. The new rates on dividends will be:

- Basic rate (increased from 7.5%): **8.75%**
- Higher rate (increased from 32.5%): **33.75%**
- Additional rate (increased from 38.1%): **39.35%**

This measure ensures that those individuals who are able to decide for themselves the proportion of income which they choose to take as either earnings or dividends, cannot manipulate their income so as to avoid the additional 1.25% charge.

Health and Social Care Levy from 2023-24

The new, legislatively separate Health and Social Care Levy will take effect from 6 April 2023.

From 6 April 2023 onwards, NICs rates will decrease back to their 2021-22 tax year levels and will be replaced by a separate hypothecated (ringfenced) 1.25% Health and Social Care Levy, payable by all working adults, including those over the state pension age, from which the revenue will be directly used by the Government to support UK health and social care.

The Health and Social Care Levy will be subject to the same reliefs, thresholds and requirements as the qualifying NICs (Class 1, Class 1A, Class 1B or Class 4) in respect of which the levy is payable.

Legislation

The wording used in the Health and Social Care Levy Act 2021 (Royal Assent granted 20 October 2021) is that the levy will be payable 'on amounts in respect of which National Insurance contributions are, or would be if no restriction by reference to pensionable age were applicable,

payable'. This provides an effective legislative shortcut – obviating the need to write extensive new legislation, it simply ties the Health and Social Care Levy to the existing NIC legislation.

Provision is made in s. 2 of the Act, for the proceeds of the levy, along with any relevant penalties and interest collected by HMRC in respect of the levy, to be paid over to the Secretary of State and then to be used towards the cost of health care and social care in 'in such shares as between England, Wales, Scotland and Northern Ireland, as the Treasury may determine'.

In respect of the mechanics of operating the levy, s. 3 provides the direct link to NIC legislation:

1. For the purposes of the operation of the health and social care levy, any provision made by or under an enactment that applies in relation to a qualifying national insurance contribution is to apply in relation to payments of the levy corresponding to the contribution.
2. The following are examples of provisions that, as a result of subsection (1), may apply in relation to the levy-
   a. under an enactment that applies in relation to a qualifying national insurance contribution is to apply in relation to payments of the levy corresponding to the contribution.
   b. provision relating to returns of information and the supply of accounts, statements and reports;
   c. provision relating to the assessing, collecting and receiving of national insurance contributions;
   d. provision conferring or regulating a right of appeal;
   e. provision concerning administration, penalties or interest on unpaid national insurance contributions;
   f. provision about the priority of amounts owed to the Commissioners for Her Majesty's Revenue and Customs in cases of insolvency under the law of any part of the United Kingdom.
3. Subsection (1) does not apply to any provision-
   a. limiting the maximum amount of national insurance contributions that are payable by any person, or
   b. about a person's entitlement to benefits.

Differences from National Insurance contributions

The effect of the legislation is to ensure that whilst the levy is, for operating purposes, subject to the NIC regulations, it will not be taken into account for the purposes of general state benefits or pension entitlement, nor will it be subject to the annual maximum restrictions which otherwise apply to Class 1, 2 and 4 NICs for individuals with multiple employment and/or self-employment.

However, it is possible that some other differences between NICs and the Health and Social Care Levy could emerge at some future point. Powers are given under the Health and Social Care Levy Act 2021 (in s. 4) for the Treasury to make regulations in respect of any reliefs and exceptions to the levy, and for any other 'supplementary, incidental and consequential' provisions that it may require, which allows a broad scope.

Impact assessment

HMRC acknowledges in its policy paper (published 9 September 2021) that there may be significant behavioural effects in respect of decisions surrounding recruitment, incorporation and wage

settlements. In addition, the macroeconomic effects are expected to be large, particularly in respect of earnings, inflation and company profits.

The Treasury's Illustrative analysis (published 7 September 2021) accepted that 'businesses may choose to adjust wages, prices, or profits' and so it chose to exclude those impacts from its analysis whilst recognising that 'households will nonetheless be impacted by this part of the package'.

However, even assuming that the increase in employers' NICs will be passed wholly through to wages, the Treasury maintains that, taking into account the additional benefit to be received in the form of future help towards social care costs, the poorest households still stand to benefit the most as a proportion of income - though this of course does not take into account the time lag between the immediate and certain cost suffered and the potential but uncertain future benefit to be received. The Treasury figures project that:

- Households in the top 20% of income will contribute more than 40 times that of households in the lowest 20% of income.
- Over a third of the overall tax increases (and over half the increase in dividend tax rates) will come from the top 10% of households, with the majority coming from the top 20% of households

In 2022-23, over 29 million individuals (primarily employees, but also the self-employed and those in receipt of taxable dividends) will be directly affected by the new tax (although based on NICs, throughout the Health and Social Care Levy Act 2021 it is expressly described as a tax). In 2023-24, more individuals will be affected as the levy is extended to include working pensioners.

It will also have a significant impact on over 1.6 million employers who will be required to operate the levy. One-off costs will include training and familiarisation with the change and updating software or systems to reflect the change. Payroll software providers will also incur costs of familiarisation and will be required to update their software products to reflect the change, and it is reasonable to assume that at least part of these costs will be passed onto customers.

Finally, HMRC will also incur substantial additional costs (though these have not yet been quantified) including changes to its IT systems and extra staff costs for supporting customers and ensuring compliance with the new system.

National Insurance for Internationally Mobile Workers

For NICs, the world is divided into three categories, each with its own rules:

- EU member states and Switzerland
- Reciprocal agreement (or Double Contributions Convention) countries
- Rest of the world

EU member states

Note that the EU and EEA/EFTA are slightly different: the EEA is made up of the EU plus the EFTA states: Switzerland, Norway, Iceland & Liechtenstein. Thes EU rules also applied to all EEA countries until 31 December 2020.

From 1 January 2021, the EU rules only apply to the EU countries and Gibraltar. Switzerland, Norway and Iceland reverted to their reciprocal agreements and as there is no such agreement with Liechtenstein, it is now a Rest of the World (ROW) country.

*Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Gibraltar**, *Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, and Sweden.*

* Gibraltar continues to be treated by the UK as if It were a member state of the EU.

The Channel Islands and Isle of Man are not included.

Throughout the EU, (whether coming from or going to the UK), NICs (both employee and employer) are due in the country in which the work is performed, unless the individual *normally* works in two or more EU countries or has been *temporarily* seconded by their existing employer and (in either case) has obtained a portable certificate of continuing liability, normally called A1 (EU nationals) or E101 (for non-EU nationals) and they must then continue to pay NICs (employee and employer) in their home country. The same principles apply to self-employed individuals temporarily working in the EU.

Temporarily seconded to/working in the EU

- CA8421 to determine which country's social security applies if temporarily seconded to work in the EU
- Must already have been within UK social security for at least one month before being posted (NIM33090)
- Cannot be replacing another worker (eg where the project itself lasts more than 2 years) (NIM33075)
- CA3821 – application for portable certificate of continuing liability (A1/E101) - employer questionnaire to be completed when applying for the first time
- CA3822 – application for portable certificate of continuing liability (A1/E101) – employer to complete for each employee going to work abroad
- CA3837 – application for portable certificate of continuing liability (A1/E101) – for a self-employed person
- Maximum 24 months in all cases
- See https://www.gov.uk/guidance/paying-employees-working-abroad
- CA8454 - Healthcare application (to remain within UK NHS if resident overseas and still subject to UK NICs) – to obtain portable document S1/E106

Working in the UK if temporarily seconded from the EU or dividing time between 2 or more countries within the EU

Employees

- UK NICs apply unless the worker produces a portable certificate of continuing liability (A1/E101)

Employers

- UK NICs apply unless the worker produces a portable certificate of continuing liability (A1/E101)
- The employer is liable provided they have a place of business in the EU – even if they do not have a place of business in the UK (in this case they would need a 'NI-only' scheme).

Normally working in 2 or more EU countries

- CA8421 - to determine which country's social security applies, if normally working in 2 or more countries in the EU (employed or self-employed) *or* flight crew with a home base in the UK *or* working on a vessel at sea with a UK or EU flag flag but paid by someone based in the UK
- Country of residence takes precedence if work performed to a substantial extent in that country (25% of time or earnings) (Article 13, NIM33100)

Reciprocal Agreement (or Double Contribution Convention) countries

Barbados, Bermuda, Bosnia-Herzegovina, Canada, Chile, Croatia, Guernsey, Iceland, Isle of Man, Israel, Jamaica, Japan, Jersey, Republic of Korea, Kosovo, Mauritius, Montenegro, North Macedonia, Norway*, Philippines, Serbia, Switzerland*, Turkey, USA.*

**with effect from 1 January 2021, these agreements include employer obligations*

NICs are due in the country in which the work is performed, unless the individual has been seconded by their existing employer and obtains a "Certificate of Continuing Liability" in which case they (both employee and employer) must continue to pay NICs in the home country.

In most cases NICs will be due in only in one country or the other, however, unlike the EU, in some cases there may be a liability in *both* countries so it is important to check with the relevant authorities.

For example, the UK–USA agreement makes it plain that a person with two employments can have two liabilities: a transatlantic employee with both UK and USA contracts of employment will be liable in the UK on earnings from the UK contract and in the USA on earnings from the USA contract. Similarly, an employee posted to Iceland but unable to obtain a certificate of continuing liability may still be liable for UK NICs for the first 52 weeks whilst also being liable for Icelandic social security contributions.

Certificates of Continuing Liability can last for up to 5 years, depending upon the individual agreement (NIM33405):

- Barbados – 3 years
- Bermuda – 12 months
- Canada – 5 years
- Republic of Chile – 5 years
- Iceland – (from 1/1/2021) - 1 year (but can be extended further year)
- Isle of Man – varies, refer to specific agreement
- Israel – 2 years
- Jamaica – 3 years
- Japan – 5 years
- Jersey and Guernsey – 3 years
- Republic of Korea – 5 years
- Mauritius – 2 years
- Norway (from 1/1/2021) – 3 years
- Philippines – 3 years
- Switzerland – 2 years
- Turkey – 3 years
- United States of America (USA) – 5 years
- Republic of Former Yugoslavia (covers Bosnia-Herzegovina, Serbia, Kosovo, Montenegro, and the Republic of Macedonia/North Macedonia) – 12 months

Temporarily seconded to RA/DCC country from UK

- CA9107 – application for a certificate of continuing liability (employed or self-employed)
- See https://www.gov.uk/national-insurance-if-you-go-abroad

Temporarily seconded to UK from a RA/DCC country

Employees

- UK NICs apply unless the worker produces a certificate of continuing liability

Employers

- Unless the worker produces a portable certificate of continuing liability:
  - The employer is liable provided they have a place of business in the UK
  - For Switzerland, the employer is still liable even if they do not have a place of business in the UK, provided they have a place of business in the agreement country (in this case they would need a 'NI-only' scheme).

Rest of The World (ROW)

NICs are due as normal in the country in which the work is performed, unless the individual has been temporarily seconded by their existing employer, in which case the individual must continue to pay UK NICs for the first 52 weeks.

This may mean that the individual is liable in both countries simultaneously, depending upon the laws of the country to which they have been seconded.

Note that for secondments which start on or after 1st January 2021, the ROW now includes Liechtenstein (secondments commencing up to 31st December 2020 will continue to be covered by the EEA rules).

Temporarily seconded to/working in the ROW

Regulation 146 of the Social Security (Contributions) Regulations 2001

Employees

- If the worker is 'ordinarily' resident in the UK;
- was resident immediately before being seconded; *and*
- the employer has a place of business in the UK

then UK NICs (employee and employer) continue for the first 52 weeks.

Self employed

- No UK liability - will be liable in the country in which they are working

Working in the UK

Regulation 145(2) of the Social Security (Contributions) Regulations 2001

Employees

- If the worker is:
    - not 'ordinarily' resident;
    - not employed in the UK; *and*
    - the employer is outside of the UK (even if they also have a place of business in the UK)

  then no UK NICs (employee or employer) for the first 52 weeks.
- Otherwise, employee NICs apply from the start

Employers

- If the employer has a place of business in the UK, then there will be employer NICs in the UK after 52 weeks.
- For Liechtenstein, the employer will be liable after 52 weeks even if they do not have a place of business in the UK, provided they have a place of business in Liechtenstein (in this case they would need a 'NI-only' scheme).
- In all other cases, if the employer does not have a place of business in the UK, there will be no employer NICs, but employee-only NICs will be due after 52 weeks (in this case the employee would need a 'DCNI' scheme).

Self employed

- If the worker is not 'ordinarily resident' in the UK, then there are no UK Class 2 NICs until they have been resident for 26 out of the preceding 52 weeks.

Meaning of 'Ordinarily resident'

NIM33555

In Social Security legislation, the term 'ordinarily resident' still exists but has a different meaning to the old tax definition. It simply means the place in which you are 'habitually resident', ie the place you where you have made your home and to which you habitually return. It is a subjective judgement and includes factors such as:

- Will the person be coming to the UK during the period of employment abroad?
- Will the person's family - spouse/partner and/or children - be accompanying them abroad?
- Will the person retain a home in the UK?
- If the person retains a home, will it be available for their use when they return?
- Will the person be returning to the UK at the end of the period abroad?

In practical terms if you expect to be in a country for more than 3 years and are taking your family with you, or if don't intend to return, you will usually cease to be ordinarily UK resident from the outset.

Voluntary NICs for periods abroad

Regulation 147 of the Social Security (Contributions) Regulations 2001

If employed *or* self employed overseas, the individual can choose to pay either Class 2 or Class 3 NICs (but Class 2 is cheaper and accrues similar pension entitlements) voluntarily, provided they:

- Had been resident in the UK for 3 continuous years at any time; *or*
- paid full NICs in any 3 (not necessarily continuous) years, ie with an earnings factor of 52 x Lower Earnings Limit

If neither in employment *nor* self-employment overseas, the individual can only pay Class 3 NICs voluntarily, provided they:

- Had been resident in the UK for 3 continuous years at any time; *or*
- paid full NICs in any 3 (not necessarily continuous) years, ie with an earnings factor of 52 x Lower Earnings Limit

See Leaflet NI38 and application form CF83 (contained in the NI38 – back pages)

Note that although the NI38 does not directly accord with the legislation (which specifically requires *both* conditions to be satisfied) HMRC have confirmed that:

- notwithstanding the reference in section 147(1) to satisfying "the conditions specified in … (3)", the "or" at the end of the list in 147(3)(b)(iii) implies that an "or" should be used for the paragraphs above it.

- During the parliamentary debate on the Social Security (Contributions) Amendment (No. 2) Regulations 1974 the then Under-Secretary of State for Health and Social Security explained that only one condition needs to be met in order for the regulation to apply.
- The introductory text of the Social Security (Contributions) Regulations 2001 explains that its only purpose is to consolidate the regulations it revoked therefore it was not intended to change the policy of those regulations

Income Tax for Internationally Mobile Employees

For Income Tax, the world is divided into two categories, each with its own rules:

- Double Taxation Agreements (DTAs)
- No agreement

A UK resident individual is always liable to income tax on their worldwide income. A non-resident individual will only be liable to tax on income earned in respect of duties performed in the UK. A UK resident Having determined *where* the individual is taxed, we then need to consider *how* tax is applied. This may be under PAYE or Self Assessment.

Double Taxation Agreements (DTAs)

The UK has more than 130 double taxation agreements around the world and the full list can be found here: Tax treaties. Always check the relevant agreement first.

The Employment (sometimes called 'Dependant services') Article will usually be either Article 14 or 15 and though the precise terms of each treaty will vary slightly, almost all follow a common format which is based on the OECD Model Treaty:

> 1. *Subject to the provisions of Articles 16 (directors), 18 (pensions), and 19 (government service), salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.*

In other words, the starting point, except where special rules apply for particular occupations (eg directors, civil servants) or income (eg pensions), is that the country in which the work is actually performed gets priority of taxation, unless…

> *2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:*
>
> > *a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned; and*
> >
> > *b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and*
> >
> > *c) the remuneration is not borne by a permanent establishment which the employer has in the other State.*

Note that all 3 conditions must be met for this part to apply. If so, the individual is taxed only in the country of residence and there is no tax in the country where they are working, unless...

> *3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, or aboard a boat engaged in inland waterways transport, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.*

Treaty operation

The DTA tells us which country gets to tax the employment income *first*. This is almost always (unless the 3 conditions of para 2 are satisfied) where the work is being performed. Unless the treaty specifically says that income is taxable "..*only* in the state.." then the income is *also* taxed in the country where the individual is resident, but double taxation relief should apply in that country.

No agreement

In the absence of a DTA, normal domestic legislation applies:

- If the individual is UK resident, they will be taxed on worldwide income.
- If the individual is not UK resident, the UK will always charge tax in respect of income (including benefits in kind) for employment performed physically in the UK.

Payroll operation

See the table at Payroll scheme types for the different sorts of payroll scheme to cope with the various possibilities.

PAYE (Income Tax) liability

If the employer has *no place of business in the UK,* the employer cannot be made (or even allowed) to operate a PAYE scheme (for tax) though may still be liable to operate NICs.

The employee could either operate a PAYE scheme on a voluntary basis, or report the income via a Self Assessment Tax Return.

NICs liability

Within the EU & Switzerland, the EU-UK Trade and Cooperation Agreement provides that each employer is required to operate the terms of the social security scheme applying to the country concerned, even if they do not have a place of business in that particular country.

In all other countries (Reciprocal Agreement and ROW countries) the employer is not responsible (or liable) for operating NICs unless the employer has a place of business in that country. So an overseas employer cannot be liable for employer NICs or for the operation of NICs if there is no place of business in the UK. In these cases, only employee's NICs are due and the employee is liable to account for them.

Apportionment of earnings

For non-resident employees (who are therefore only liable for tax on their UK earnings), section 690, ITEPA 2003 allows the employer to agree with HMRC over the proportion of earnings to be taxed.

An apportionment can also be agreed for those non-domiciled employees who are using the remittance basis under Overseas Workday Relief rules (for the first 3 years of residence only).

In the absence of an agreement, the employer must operate PAYE on all earnings and it would be up to the employee to claim any refund via self assessment.

A 690 apportionment is agreed in advance on the basis of estimated UK earnings and the employee is then required to complete a Self Assessment Tax Return to reconcile the actual UK proportion, once it is known.

HMRC guidance is at PAYE81560 and applications can be made using: 690 Applications.

Host employer liability

Section 689, ITEPA 2003 provides that where an employee is performing work for a person who is not their employer and the actual employer is outside the scope of PAYE (because they have no place of business in the UK) then the *host* employer is liable to operate PAYE as if they were the one making the payment of earnings – see EIM11820. Mirroring provisions appear in NIC legislation – Social Security (Categorisation of Earners Regulations 1978, Sch. 3, para 9 – see NIM33720.

A typical example of this is where a UK business engages a worker through an offshore agency. The UK client (or UK agency in the chain – see ESM2039) will be liable for both PAYE and NICs.