



# National Insurance Contributions Act 2011

## CHAPTER 3

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# National Insurance Contributions Act 2011

## 2011 CHAPTER 3

An Act to make provision for and in connection with increasing rates of national insurance contributions and a regional secondary Class 1 contributions holiday for new businesses. [22nd March 2011]

**B**E IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART 1

#### INCREASES IN RATES

#### 1 Class 1 contributions

- (1) In section 8(2) of SSCBA 1992 and SSCB(NI)A 1992 (calculation of primary Class 1 percentages)—
  - (a) in paragraph (a) (main primary percentage), for “11” substitute “12”, and
  - (b) in paragraph (b) (additional primary percentage), for “1” substitute “2”.
- (2) In section 9(2) of SSCBA 1992 and SSCB(NI)A 1992 (calculation of secondary Class 1 percentage), for “12.8” substitute “13.8”.

#### 2 Class 4 contributions

- (1) In section 15(3ZA) of SSCBA 1992 and SSCB(NI)A 1992 (Class 4 percentages)—
  - (a) in paragraph (a) (main Class 4 percentage), for “8” substitute “9”, and
  - (b) in paragraph (b) (additional Class 4 percentage), for “1” substitute “2”.

- (2) In section 143(4)(b) of SSAA 1992 (power to alter contributions with a view to adjusting level of National Insurance Fund: main Class 4 percentage not to be increased to more than 8.25 per cent), for “8.25” substitute “9.25”.

### 3 Increased product of additional rates to be paid into National Insurance Fund

In section 162(5) of SSAA 1992 and section 142(5) of SSA(NI)A 1992 (destination of contributions: 100 per cent of product of additional primary percentage rate and additional Class 4 percentage rate to form part of health service allocation), for “100” substitute “50”.

## PART 2

### REGIONAL SECONDARY CONTRIBUTIONS HOLIDAY FOR NEW BUSINESSES

#### 4 Holiday for new businesses

- (1) This section applies where—
- (a) a person, or a number of persons in partnership, (“P”) starts a new business during the relevant period,
  - (b) the principal place at which the new business is carried on when it is started is not in any of the excluded regions, and
  - (c) one or more persons are qualifying employees in relation to the new business.
- (2) The appropriate amount in respect of each qualifying employee may be—
- (a) deducted from Class 1 contributions payments which P is liable to make, or
  - (b) refunded to P.
- (3) Section 5 defines what is meant by “starting a new business”.
- (4) “The relevant period” is the period—
- (a) beginning with 22 June 2010, and
  - (b) ending with 5 September 2013.
- (5) “The excluded regions” are Greater London, the South East Region and the Eastern Region.
- (6) Section 6 specifies when a person is a qualifying employee in relation to a new business.
- (7) Section 7 specifies what is the appropriate amount in respect of a qualifying employee.
- (8) Section 8 explains how a deduction or refund is made.
- (9) Section 9 makes provision requiring the retention of records.
- (10) Section 10 contains an anti-avoidance rule.
- (11) Section 11 makes provision for the interpretation of this Part.

#### 5 Starting a new business

- (1) P “starts” a new business when P begins to carry on a new business.

- (2) A business is not a “new” business if –
  - (a) P has, at any time during the period of 6 months ending with the time when P begins to carry it on, carried on another business consisting of the activities of which the business consists (or most of them), or
  - (b) P carries it on as a result of a transfer (within the meaning of subsection (3)).
- (3) P carries on a business as a result of a transfer if P begins to carry on the business on another person ceasing to carry on the activities of which it consists (or most of them) in consequence of arrangements involving P and the other person.
- (4) For the purposes of subsection (3) P is to be taken to begin to carry on a business on another person ceasing to carry on such activities if –
  - (a) the business begins to be carried on by P otherwise than in partnership on such activities ceasing to be carried on by persons in partnership, or
  - (b) P is a number of persons in partnership who begin to carry on the business on such activities ceasing to be carried on –
    - (i) by a person, or a number of persons, otherwise than in partnership,
    - (ii) by persons in a partnership not consisting only of all the persons constituting P, or
    - (iii) partly as mentioned in sub-paragraph (i) and partly as mentioned in sub-paragraph (ii).
- (5) P is not to be regarded as starting a new business by beginning to carry on a business if –
  - (a) before P begins to carry on the business, P is a party to arrangements under which P may (at any time during the relevant period) carry on as part of the business activities carried on by any other person, and
  - (b) the business would have been prevented by subsection (2)(b) from being a new business had –
    - (i) P begun to carry on the activities when beginning to carry on the business, and
    - (ii) the other person at that time ceased to carry them on.
- (6) In this section “business” means something which is –
  - (a) a trade, profession or vocation for the purposes of the Income Tax Acts or the Corporation Tax Acts,
  - (b) a property business (within the meaning of section 263(6) of the Income Tax (Trading and Other Income) Act 2005), or
  - (c) an investment business (that is, a business consisting wholly or partly of making investments).

## 6 Qualifying employees

- (1) A person is a “qualifying employee” in relation to a new business if –
  - (a) the person first becomes employed as an employed earner for the purposes of the new business before the end of the initial period, and
  - (b) P is the secondary contributor in relation to any payment of earnings to or for the benefit of the person in respect of the employment at any time during the period that is the holiday period in relation to the person.

- (2) Where (apart from this subsection) there would be more than 10 qualifying employees, only the first 10 persons who become qualifying employees are qualifying employees.
- (3) The “initial period” means the period of one year beginning with—
- (a) the date on which P starts the new business, or
  - (b) if earlier, the first date on which a person first becomes employed as an employed earner for the purposes of the new business,
- but if the first date on which a person first becomes employed as an employed earner for the purposes of the new business is before 22 June 2010, the person is to be taken for the purposes of paragraph (b) as first so employed on that date.
- (4) The “holiday period”, in relation to a person, is the period—
- (a) beginning with the day on which the person first becomes employed as an employed earner for the purposes of the new business or, if the person first becomes so employed before 6 September 2010, with that date, and
  - (b) ending with the earlier of—
    - (i) the end of the period of one year beginning with the day on which it begins, and
    - (ii) the end of the relevant period.
- (5) None of the following has effect for the purposes of this Part—
- (a) the Social Security Contributions (Intermediaries) Regulations 2000 (S.I. 2000/727) and the Social Security Contributions (Intermediaries) (Northern Ireland) Regulations 2000 (S.I. 2000/728) (which provide in certain cases for an intermediary to be treated as the secondary contributor in relation to the payment of earnings), and
  - (b) the Social Security Contributions (Managed Service Companies) Regulations 2007 (S.I. 2007/2070) (which provide in certain cases for a managed service company to be treated as the secondary contributor in relation to the payment of earnings).

## **7 The appropriate amount**

- (1) The appropriate amount in respect of a qualifying employee is the relevant amount of secondary Class 1 contributions.
- (2) “The relevant amount of secondary Class 1 contributions” is the amount of secondary Class 1 contributions which P is liable to pay in respect of relevant earnings.
- (3) “Relevant earnings” are earnings paid to or for the benefit of the qualifying employee, in respect of employment as an employed earner for the purposes of the new business, at any time during the holiday period when the principal place at which the business is carried on is not in any of the excluded regions.
- (4) But if (apart from this subsection) the relevant amount of secondary Class 1 contributions would exceed £5,000, it is the first £5,000 which P becomes liable to pay.
- (5) In the case of a qualifying employee who is a mariner, the reference in subsection (3) to earnings paid at any time during the holiday period includes, in relation to earnings paid for a voyage beginning in the holiday period but

ending after it, earnings earned in the part of the voyage period falling within the holiday period.

“Mariner” and “voyage period” have the meaning given by regulation 115 of the 2001 Regulations.

- (6) If P is liable to pay secondary Class 1 contributions at the contracted-out rate, P is to be treated for the purposes of subsection (2) as liable to pay them at the non-contracted-out rate; and for this purpose “contracted-out rate” and “non-contracted-out rate” have the same meaning as in the 2001 Regulations.

## **8 Making of deductions or refunds**

- (1) To the extent that the appropriate amount is attributable to secondary Class 1 contributions payable in respect of earnings paid in a tax year it may be deducted from any one or more Class 1 contributions payments made by P in respect of that tax year.
- (2) If the amount which P would be entitled to deduct under this section exceeds the amount of the payments from which it can be deducted, HMRC must instead refund the excess to P if P requests them to do so.
- (3) No deduction or refund may be made under this section until an application has been submitted to, and granted by, HMRC.
- (4) An application must contain such information, and must be made in such form and manner, as is specified by HMRC.
- (5) No application may be made for a refund in respect of a qualifying employee after the end of the period of 4 years beginning with the day on which the last deduction could be made in respect of the qualifying employee.
- (6) For the purposes of –
  - (a) Part 2 of the Social Security Contributions (Transfer of Functions, etc.) Act 1999, and
  - (b) Part 3 of the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671),(decisions and appeals), the decisions to which this subsection applies are decisions of an officer of Revenue and Customs under section 8 of that Act or Article 7 of that Order.
- (7) Subsection (6) applies to –
  - (a) a decision whether P is or was entitled to make a deduction under this section and, if so, the amount that P is or was entitled to deduct, and
  - (b) a decision whether P is entitled to a refund under this section and, if so, the amount of the refund.

## **9 Retention of records**

- (1) This section applies where P is or was entitled to make a deduction under section 8 in respect of a qualifying employee.
- (2) P must keep and preserve any documents or records relating to –
  - (a) P’s entitlement to make a deduction in respect of the employee, and
  - (b) the calculation of any amount that has been, or could have been, deducted,

for not less than 3 years beginning with the date on which the last deduction under section 8 is, or could be, made in respect of the employee.

- (3) Accordingly, the duty imposed by paragraph 26(1) of Schedule 4 to the 2001 Regulations (retention by employer of contribution and election records) does not apply to any such documents or records.
- (4) The duty imposed by this section may be discharged by preserving the documents or records in any form or by any means.
- (5) For the purposes of Schedule 36 to the Finance Act 2008 (information and inspection powers), as applied by section 110ZA of SSAA 1992 and section 104ZA of SSA(NI)A 1992, the duty imposed by this section is to be treated as if it were a duty imposed under or by virtue of SSCBA 1992 or SSCB(NI)A 1992.

## 10 Anti-avoidance

- (1) This Part does not apply if P starts the new business pursuant to avoidance arrangements.
- (2) Arrangements are “avoidance arrangements” if the main purpose, or one of the main purposes, of P in being a party to them is to secure that activities which might otherwise have been carried on as part of another business (whether by P or any other person) are carried on by P as part of the new business in order to obtain deductions or refunds (or increased deductions or refunds) under this Part.

## 11 Interpretation of Part 2

- (1) In this Part—
  - “the 2001 Regulations” means the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004);
  - “the appropriate amount” is to be read in accordance with section 7;
  - “arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable);
  - “Class 1 contributions payments” means payments under—
    - (a) paragraph 10 of Schedule 4 to the 2001 Regulations (monthly payments), or
    - (b) paragraph 11 of that Schedule (quarterly payments);
  - “the Eastern Region” means—
    - (a) the counties of Bedford, Cambridgeshire, Central Bedfordshire, Essex, Hertfordshire, Norfolk and Suffolk, and
    - (b) the non-metropolitan districts of Luton, Peterborough, Southend-on-Sea and Thurrock;
  - “the excluded regions” has the meaning given by section 4(5);
  - “HMRC” means the Commissioners for Her Majesty’s Revenue and Customs;
  - “holiday period” has the meaning given by section 6(4);
  - “qualifying employee” has the meaning given by section 6;
  - “the relevant period” has the meaning given by section 4(4);
  - “the South East Region” means—

- (a) the counties of Buckinghamshire, East Sussex, Hampshire, the Isle of Wight, Kent, Oxfordshire, Surrey and West Sussex, and
  - (b) the non-metropolitan districts of Bracknell Forest, Brighton and Hove, Medway, Milton Keynes, Portsmouth, Reading, Slough, Southampton, West Berkshire, Windsor and Maidenhead and Wokingham.
- (2) Expressions used in this Part and in Part 1 of SSCBA 1992 or SSCB(NI)A 1992 have the same meaning for the purposes of this Part as they have for the purposes of that Part.

### PART 3

#### GENERAL

#### 12 Abbreviations of Acts

In this Act—

- “SSAA 1992” means the Social Security Administration Act 1992;
- “SSA(NI)A 1992” means the Social Security Administration (Northern Ireland) Act 1992;
- “SSCBA 1992” means the Social Security Contributions and Benefits Act 1992;
- “SSCB(NI)A 1992” means the Social Security Contributions and Benefits (Northern Ireland) Act 1992.

#### 13 Commencement

- (1) Part 1 comes into force on 6 April 2011.
- (2) Part 2 and this Part come into force on the day on which this Act is passed.

#### 14 Extent

- (1) The amendments made by Part 1 have the same extent as the provisions to which they relate.
- (2) Part 2 and this Part extend to England and Wales, Scotland and Northern Ireland.

#### 15 Short title

This Act may be cited as the National Insurance Contributions Act 2011.