Aligning the time limits for recovery of NICs with Income Tax

Response by the Chartered Institute of Taxation

1. Executive Summary

1.1. The Chartered Institute of Taxation (CIOT) welcomes the opportunity to respond to the consultation on "Aligning the time limits for recovery of NICs with Income Tax".

1.2. The Chartered Institute of Taxation (CIOT) is the leading professional body in the UK for advisers dealing with all aspects of taxation, with over 20,000 members. We are a charity and our primary purpose is to promote education in taxation with a key aim of achieving a more efficient and less complex tax system for all. We draw on the experience of our member and volunteer networks in providing our response.

1.3. We support the principle of aligning the administrative frameworks for National Insurance contributions (NIC) and Income Tax. PAYE Income Tax and Class 1 NIC liabilities commonly arise from the same earnings and are considered as part of the same employer compliance review. Applying different processes, time limits and appeal mechanisms to those liabilities creates unnecessary complexity for employers, employees, advisers and HMRC.

1.4. Alignment and simplification of the NIC assessment and recovery time limits with their income tax counterparts would be consistent with our wider representations through the Tax Administration Framework Review. We have previously recommended greater alignment of HMRC's powers, processes, safeguards and time limits across taxes, particularly in multi-tax employer compliance cases.

1.5. However, alignment should mean genuine procedural alignment. We are not persuaded that introducing a separate Notice of NICs Liability, operating alongside the existing section 8 decision process, achieves that objective. The proposal risks adding another statutory document and another procedural step while retaining the underlying differences between PAYE and NICs.

1.6. Our preference would be for a single assessment framework, or at least a single combined notice, covering PAYE and NIC liabilities arising from the same underlying facts. The associated appeal process should allow all connected PAYE and NIC issues to be determined together. Procedural alignment does not require the underlying liabilities, or the rights of the employer and affected employees, to be identical; the framework should preserve appropriate safeguards for each party without requiring duplicative processes.

1.7. We also disagree with the suggestion that there are no foreseeable disadvantages, other than the reduction in the NIC repayment period. Under the proposal, an enforceable NIC liability could be established within the behavioural assessment periods applicable to Income Tax, including the longer periods for deliberate behaviour and offshore matters. Once established, recovery would no longer be subject to a fixed six-year limitation period. That represents a material change for employers and requires appropriate safeguards.

1.8. Particular care will be needed in relation to:

- commencement and transitional provisions;
- the risk that periods which have already become irrecoverable could effectively be brought back into charge;
- the availability of historic payroll, employment status and employee evidence;
- protection for affected employees;
- consistency between underpayment and repayment time limits;
- clear and accessible appeal rights;
- the interaction between the proposed statutory recovery framework and the different rules on prescription and recovery in Scotland; and
- the interaction with other changes to the tax administration framework, including any new error-correction obligations.

2. Introduction

2.1. This consultation is seeking views on the proposal to:

- remove NICs from the scope of the Limitation Act 1980 and Limitation (Northern Ireland) Order 1989;
- introduce a statutory Notice of NICs Liability;
- align the time limits for recovery of NICs debts with those for tax; and
- align the time limits for refunds and repayments of NICs with those for tax.

2.2. Our stated objectives for the tax systems include:

- A legislative process that translates policy intentions into statute accurately and effectively, without unintended consequences.
- Greater simplicity and clarity, so people can understand how much tax they should be paying and why.
- Greater certainty, so businesses and individuals can plan ahead with confidence.
- A fair balance between the powers of tax collectors and the rights of taxpayers (both represented and unrepresented).
- Responsive and competent tax administration, with a minimum of bureaucracy.

2.3. We support reform and alignment of NIC with income tax in principle. The present differences between the PAYE and NIC frameworks create confusion, duplication and avoidable cost. The solution, however,

should be complete alignment rather than adding a Notice of NICs Liability to an already complex section 8 framework.

2.4. Furthermore, any strengthening of HMRC's ability to establish and recover historic NIC liabilities must be accompanied by equivalent attention to taxpayer safeguards. These should include direct and intelligible appeal rights, prospective commencement, protection against the revival of old liabilities, fair repayment and consequential-claim provisions, timely closure of compliance cases and appropriate notification of affected employees.

3. Proposed changes to debt recovery process for NICs – CIOT response to questions

Question 1: To what extent do you consider that the current differences between NICs and PAYE income tax recovery processes create administrative complexity?

3.1. As noted in the consultation document, the recovery of Income Tax and NICs operates under different legislative frameworks, with different time limits and processes for recovery. This mismatch creates significant and unnecessary administrative complexity.

3.2. Where PAYE and Class 1 NIC liabilities arise from the same earnings, employers and advisers reasonably expect HMRC to establish, appeal and recover those liabilities through a common process. Instead, PAYE liabilities may be determined under regulation 80 of the Income Tax (PAYE) Regulations 2003, while disputed Class 1, 1A or 1B NIC liabilities require a decision under section 8 of the Social Security Contributions (Transfer of Functions, etc.) Act 1999.

3.3. A section 8 decision determines whether a NIC liability exists and quantifies that liability, but does not itself create an enforceable debt. HMRC may therefore also need to take protective court action or enter into a standstill agreement to prevent the limitation period expiring. The consultation acknowledges that these parallel processes create administrative burdens and can make compliance investigations more difficult for employers and advisers to navigate.

3.4. The distinction is particularly confusing for employers without specialist employment tax advisers. Employers generally regard PAYE and NICs as components of the same payroll calculation. They may find it difficult to understand why different documents, time limits and appeal routes apply to liabilities arising from the same payment.

3.5. The differences also create practical problems in due diligence exercises, settlements and the quantification of historic employer compliance exposures. Where the underlying facts are common to both taxes, advisers must nevertheless explain and calculate liabilities under different procedural frameworks.

3.6. There is also a risk that NIC liabilities are not protected in time because of uncertainty about limitation periods or because standstill agreements and protective proceedings are not put in place promptly. HMRC will be better placed to quantify the additional administrative cost and the amount of NIC potentially affected.

3.7. We therefore agree that alignment is overdue. It should, however, extend beyond debt recovery to the processes for establishing liabilities, appeals, closure and repayment claims.

Question 2: Do you agree that HMRC should introduce a statutory Notice of NICs Liability and align the time limits for the collection of NICs debts with those for income tax?

3.8. We agree that the time limits and procedures should be aligned, but we are not convinced that a separate statutory Notice of NICs Liability is the best way to achieve this. The suggested process seems overly cumbersome.

3.9. The proposed notice would create an enforceable debt and would generally have to be issued within four, six or twenty years, depending on behaviour, or within twelve years where the statutory conditions for the offshore time limit are met. Once the notice had been issued, recovery would not be subject to a further fixed time limit.

3.10. There is a strong case for removing the need for HMRC to protect NIC debts through court proceedings or standstill agreements. However, the proposed system would retain the section 8 decision process while adding a new statutory notice. That appears to be partial rather than complete alignment and may replace one form of complexity with another.

3.11. We believe that there should be one process for both income tax and NICs. Indeed, we think the process should be the same for all taxes.

3.12. Our preferred approach would therefore be to establish PAYE and NIC liabilities through the same statutory assessment process. Regulation 80 determinations and NIC liability notices should be replaced by, or integrated into, a common discovery assessment framework.

3.13. If the government concludes that a separate NIC assessment is essential, HMRC should at least be able to issue a single combined assessment covering both PAYE and NIC liabilities arising from the same earnings. That assessment should clearly state:

- the PAYE and NIC liabilities;
- the periods and employees concerned;
- the factual and legal basis of the liabilities;
- the applicable time limits;
- the effect on employees' NIC records;
- the rights of the employer and affected employees; and
- the procedure and deadline for challenging the liabilities.

3.14. We also believe that alignment should cover appeal procedures, closure mechanisms and overpayment relief. It should not be confined to strengthening HMRC's ability to recover underpaid NICs.

Question 3: Do you anticipate any disadvantages or practical constraints to the route of appeal for the Notice of NICs Liability being to appeal the associated Section 8 decision, rather than a right of appeal being directly linked to the Notice itself?

3.15. Yes. A statutory notice that creates an enforceable debt would ordinarily be expected to carry a clear and direct right of appeal. The consultation instead appears to contemplate that the Notice of NICs Liability would not itself be appealable and that the route of challenge would be through an associated section 8 decision. The legal effect of each document, and the relationship between them, must therefore be set out clearly in the legislation and on the face of the notice.

3.16. The proposed route also creates an avoidable procedural trap. An employer may reasonably assume that the statutory notice creating the enforceable debt is the instrument that must be appealed, rather than understanding that it must obtain and appeal a separate section 8 decision. There is a corresponding risk of disputes about whether a request for review or other written challenge to the notice constitutes a valid request for a section 8 decision. Employers should not lose substantive appeal rights because they challenged the correct liability through the wrong statutory route.

3.17. Separate processes could complicate the position where PAYE and NIC liabilities arise from identical facts. There should be a mechanism for the PAYE and NIC disputes to be joined and determined together, rather than requiring parallel appeals.

3.18. The current reason for retaining section 8, namely protecting an affected employee's rights and NIC record, should be addressed directly when designing a common process. The employer and affected employee need not necessarily have identical rights, but each should receive appropriate information and have a clear means of challenging a decision that directly affects them.

3.19. We therefore recommend that the appeal right should attach directly to the instrument establishing the enforceable liability. If the notice and section 8 process are retained, the legislation should provide that any written challenge to the notice within the relevant period is treated as a request for a section 8 decision and, where appropriate, an appeal against that decision. HMRC guidance and the notice itself must explain the route in clear terms.

3.20. Notwithstanding our preference for the appeal right to attach directly to the instrument establishing the enforceable liability, if the government retains the proposed two-stage process, the onus must be on HMRC to issue the section 8 decision. A taxpayer should not be required to request a section 8 decision merely to obtain an appealable decision, nor should a failure to make such a request cause the taxpayer to lose substantive appeal rights.

3.21. It must also be clear that the Notice of NICs Liability does not itself crystallise or conclusively determine the underlying NIC liability if only the section 8 decision is capable of appeal. If HMRC does not issue a section 8 decision, no conclusive liability should arise and the notice should not become effectively unchallengeable through the passage of time. If HMRC subsequently issues a section 8 decision, the taxpayer must retain the full statutory period in which to appeal that decision, regardless of when the earlier notice was issued.

3.22. The legislation must explain whether service of the Notice of NICs Liability is intended to protect HMRC's position for time-limit purposes. If it is, there must be an equivalent safeguard for the taxpayer. In particular, HMRC should be required to issue the section 8 decision within a specified period, or the notice should lapse or cease to protect HMRC's position. It would be unacceptable for HMRC's recovery position to be preserved indefinitely by an unappealable notice while the taxpayer remains unable to obtain a final determination or exercise a right of appeal.

Question 4: Do you see any administrative difficulties arising from aligning the time limit for NICs repayments with those given in the TMA?

3.23. The consultation expressly proposes reducing the period for reclaiming NICs paid in error from six years to four years. While alignment would offer simplicity, reducing the general repayment period will result in some contributors and employers losing repayments to which they would otherwise have been entitled.

3.24. Errors are sometimes discovered only as part of a later employer compliance review, due diligence exercise, employment status review or correction of historic payroll arrangements. Relevant facts may emerge more than four years after the end of the tax year, particularly where the correct treatment depends on overseas tax, social security coverage or an event occurring after the original payment.

3.25. There is no obvious administrative reason for NICs and PAYE to have different ordinary repayment periods. Nevertheless, alignment should not be considered solely from HMRC's administrative perspective. The government should identify the taxpayers and contributors who would lose existing repayment rights and explain why a four-year period is proportionate.

3.26. There is also an important question of symmetry. HMRC may, depending on behaviour and the circumstances, establish liabilities over periods of six or twenty years, or twelve years where the statutory conditions for the offshore time limit are met, but the taxpayer or contributor would generally have only four years to recover NICs paid in error. That imbalance is difficult to justify where the overpayment and underpayment arise from the same mistake or factual issue.

3.27. At a minimum, the legislation should include:

- prospective commencement provisions so that existing repayment rights are not curtailed;
- a transitional period for claims relating to earlier years;
- protection where an overpayment is discovered through an HMRC compliance review after the four-year period;
- consequential-claim provisions where a later decision alters the NIC treatment of an earlier period; and
- consideration of a longer repayment period where HMRC can assess the corresponding underpayment over a longer period.

3.28. The application of the twelve-year offshore time limit should also be reviewed for proportionality and equality impacts. It should apply only where the relevant statutory conditions are met, with appropriate safeguards where a taxpayer's international affairs have made the relevant information

harder for HMRC to obtain. The mere existence of an overseas account, employment, pension or other foreign connection should not, of itself, imply less responsible behaviour.

Question 5: Do these proposals have any specific disadvantages or unintended consequences for taxpayers, aside from the reduced repayment period for NICs paid in error?

3.29. Yes, for example:

3.30. ***Historic liabilities and taxpayer certainty***

The proposal may materially extend the period during which employers remain exposed to historic NIC liabilities. Employers may be familiar with four, six and twenty-year tax assessment periods, but NICs debts in England, Wales and Northern Ireland are currently generally subject to a six-year recovery period unless protective action is taken. The proposed framework would instead allow a notice to be issued within the relevant behavioural assessment period, after which recovery would not be subject to a further fixed time limit.

3.31. Employment tax disputes frequently depend on historic facts, contractual arrangements, working practices, payroll data and evidence from former employees. The longer the period, the more likely it is that employees have left, businesses have reorganised, systems have changed and contemporaneous evidence is no longer available.

3.32. HMRC should therefore be required to act without unreasonable delay, even where the statutory time limit has not expired. The new framework should not encourage enquiries to remain open merely because a longer assessment period may become available.

3.33. ***Scotland***

The position in Scotland requires separate consideration because the recovery of debts is subject to the Scottish law of prescription rather than the Limitation Act 1980 or the Limitation (Northern Ireland) Order 1989. The legislation and guidance should explain clearly how the proposed statutory recovery framework will interact with the Scottish rules, including the commencement position and the treatment of liabilities that have already been prescribed. The objective should be a consistent UK-wide outcome without inadvertently reviving liabilities that are no longer recoverable under the existing Scottish rules.

3.34. ***Commencement and revival of old periods***

The commencement provisions will be critical. Legislation should not cause a period that has already become irrecoverable under the existing rules to become recoverable again.

3.35. For example, suppose that, immediately before commencement, recovery of a 2019-20 NIC liability was already statute-barred under the existing rules. If new legislation then permitted a twelve-year time limit, an inadequately drafted commencement provision could appear to bring that liability back within time.

3.36. That would undermine finality and legitimate expectations. It could also increase the interest and any penalties associated with the historic liability and encourage employer compliance checks to remain open pending the introduction of longer time limits.

3.37. A precedent can be found in the commencement approach adopted when section 36A TMA 1970 was introduced. The new rules applied by reference to specified tax years, rather than simply applying to any liability that happened to fall within the newly extended period at commencement. A similarly explicit approach should be used here.

3.38. The transitional provisions should also make clear that the longer time limits will apply only as the relevant tax years arise after commencement. For example, HMRC should not be able, immediately on commencement, to apply the twelve-year offshore time limit to a NIC liability that it could not then have pursued under the existing limitation rules. This protection should be set out expressly in primary legislation rather than left to HMRC practice or guidance.

3.39. No liability that was already irrecoverable immediately before commencement should be revived. The legislation should specify the earliest tax year to which each of the four, six, twelve and twenty-year time limits can apply. This should ensure that the new periods are introduced progressively and that HMRC cannot pursue a liability which, immediately before commencement, fell outside the period available under the existing law.

3.40. ***Different tax and NIC treatment of the same correction***

There can be differences between the Income Tax and NIC consequences of correcting an error, including where the facts or the tax and NIC consequences become clear at different times. A correction may therefore generate an underpayment for one purpose and an overpayment for another, potentially subject to different statutory time limits.

3.41. Any reform should ensure that income tax and NIC treatment of a correction follows a coherent and consistent approach. In particular, the legislation should provide an effective consequential-claim mechanism where the correct treatment of one liability is established only after the ordinary repayment period for the connected liability has expired.

3.42. ***Consequences for employees***

A reassessment of an employer's PAYE and NICs position may have consequences for an individual employee beyond the immediate employer liability.

3.43. A change to the employee's NIC position may affect their contribution record. Equally, an increase in taxable employment income may affect the employee's wider tax position, including income-related charges, allowances or the tax treatment of other income and gains. For example, an increase in the employee's adjusted net income could create or increase a High Income Child Benefit Charge.

3.44. The employee should therefore be informed where an employer-level adjustment changes figures relevant to their personal tax or NIC position. This principle should not be confined to NICs. A common

notification process should apply where either PAYE or NIC corrections have consequences for an employee.

3.45. This will become especially important if wider error-correction legislation imposes obligations on taxpayers to correct historic returns or allows HMRC to issue correction notices. An employee cannot reasonably be expected to correct their personal position unless they receive sufficient and timely information about the employer-level adjustment.

Question 6: Do you agree that the Section 8 process should be simplified, and if so which aspects of the current framework do you find add the most complexity?

3.46. Yes. However, the government should consider replacing the section 8 framework rather than making only minor amendments to it.

3.47. The principal sources of complexity are:

- the need for a section 8 decision in addition to the process that creates or protects the recoverable debt;
- the need in many cases to identify and notify the individuals affected, particularly where their contribution records may be altered;
- the need to issue decisions to multiple affected parties;
- the absence of a straightforward statutory withdrawal mechanism;
- the interaction between employer and employee appeal rights;
- the need to run separate PAYE and NIC appeals arising from the same facts; and
- terminology and procedures that differ from those used for other taxes.

3.48. The consultation proposes adding a statutory power to withdraw a section 8 decision, instead of requiring HMRC to vary it to nil. We agree that this specific change would be helpful, but it does not address the more fundamental duplication. The consultation does not appear to explain whether, or in what circumstances, HMRC may withdraw a Notice of NICs Liability. The legislation should provide that the notice must be withdrawn or varied automatically where the associated section 8 decision is withdrawn, varied or overturned, so that an enforceable debt cannot remain in place without a corresponding determination of liability.

3.49. We would recommend reforming the whole assessment system and providing a common process for establishing, notifying, reviewing and appealing PAYE and NIC liabilities. Where decisions affect employees' contribution records, the legislation should provide appropriate notification and appeal rights without requiring the entire employer liability to be determined through a separate process.

3.50. The objective should be that an employer should be able to submit one review request or appeal and that a tribunal can determine all PAYE and NIC issues arising from the same facts in a single set of proceedings.

Question 7: Are there further improvements the government could make to NICs debt recovery processes?

3.51. We recommend the following further improvements:

- Create a genuinely common PAYE and NIC framework. Where liabilities arise from the same payment, they should be established by the same officer, in the same document and through the same process;
- Provide a single appeal route. Connected PAYE and NIC liabilities should be capable of review and appeal together. Procedural differences should not require duplicate proceedings;
- Should the government decide to introduce Notices, link the Notice of NICs Liability to the section 8 decision. The notice should be withdrawn or varied automatically where the associated section 8 decision is withdrawn, varied or overturned, so that an enforceable debt cannot remain without a corresponding determination of liability;
- Prevent Notices remaining unresolved indefinitely. If a Notice of NICs Liability protects HMRC's position for time-limit purposes, HMRC should be required to issue the associated section 8 decision within a specified period, failing which the notice should lapse or cease to protect HMRC's position;
- Align repayment and overpayment-relief processes. Reform should address amounts overpaid by taxpayers as well as amounts underpaid to HMRC;
- Protect finality and provide clear transitional rules. Commencement provisions must not revive liabilities that were already irrecoverable. The legislation should specify the earliest tax year to which each of the four, six, twelve and twenty-year time limits can apply, so that the longer periods are introduced progressively;
- Adopt clear closure mechanisms. Employers should know when a NIC enquiry or compliance review has been concluded and when a period can no longer be reopened;
- Require timely action by HMRC. The availability of a longer statutory time limit should not justify avoidable delays in issuing decisions or closing enquiries;
- Provide consequential-claim protection. A taxpayer should be able to claim a repayment outside the ordinary four-year period where the overpayment results from a later HMRC decision, tribunal judgment or adjustment to a connected liability;
- Improve employee notifications. Where an employer-level adjustment affects an employee's NIC record or personal tax position, HMRC or the employer should be required to provide sufficient information for the employee to understand and, where necessary, correct their position;
- Review record-retention expectations. Any extension of the period of exposure should be accompanied by clear and proportionate guidance on the records employers and employees are expected to retain;
- Use consistent terminology across taxes. Notices, assessments, determinations, decisions, reviews and appeals should use common terminology unless a substantive legal difference requires otherwise;
- Mirror the corresponding Income Tax legislation. Where the intended effect is the same, the NIC provisions should use materially identical wording. Any necessary differences should be expressly identified and explained;

- Publish an integrated process map. Guidance should show the complete PAYE and NIC process, including notification, challenge, appeal, suspension of enforcement, employee consequences, repayment and finality; and
- Monitor the operation of the new rules. HMRC should publish information on the use of the different time limits, the age of liabilities pursued, appeals, delayed cases, consequential repayment claims and the effect on affected employees.

4. Acknowledgement of submission

4.1. We would be grateful if you could acknowledge safe receipt of this submission, and ensure that the Chartered Institute of Taxation is included in the List of Respondents when any outcome of the consultation is published.

The Chartered Institute of Taxation

About us

The Chartered Institute of Taxation

The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.

The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries.

Our members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.