

IMPORTANT INFORMATION FOR SLEEPING AND INACTIVE LIMITED PARTNERS ABOUT THEIR LIABILITY TO PAY CLASS 2 AND 4 NATIONAL INSURANCE CONTRIBUTIONS

HMRC now considers that Sleeping and inactive Limited Partners are—and have in the past been—liable to pay Class 2 National Insurance contributions (NICs) as self employed earners and Class 4 NICs in respect of their taxable profits. “Inactive Limited Partners” are Limited Partners who take no active part in running the business. This view represents a change from that previously held by HMRC and the Department for Work and Pensions.

WHAT HAPPENS NEXT

Sleeping or inactive Limited Partners who have not paid Class 2 or Class 4 NICs for a past period will not be required by HMRC to pay those contributions.

Payment of Class 2 NICs from 6 April 2013

HMRC now take the view that Sleeping and inactive Limited Partners are liable to pay Class 2 NICs because they are “gainfully employed” as self employed earners for the purposes of section 2(1)(b) of the Social Security Contributions and Benefits Act 1992 because: -

- “Employment” as defined in section 122 of the Social Security Contributions and Benefits Act 1992 includes business and section 1(1) of the Partnership Act 1890 provides that “Partnership is the relation which subsists between persons carrying on a business in common with a view of profit”; and
- Section 2(1)(b) of the Social Security Contributions and Benefits Act 1992 imposes no requirement that partners have to be active in the business.

Class 2 NICs is a weekly liability which will be due from 6 April 2013 unless a Sleeping or inactive Limited Partner is either under 16, over pension age, is

granted the Small Earnings Exception, is a married woman or widow with reduced liability, or claims deferment on account of other employments.

It will therefore be necessary for Sleeping and inactive Limited Partners to check their Class 2 NICs position. Sleeping and inactive Limited Partners who are not already paying Class 2 NICs as a result of being self employed must advise HMRC of their self-employed status and arrange to pay NICs or seek exception/deferment, etc, according to their individual circumstances. Many Sleeping and inactive Limited Partners will qualify under one of these exceptions but there is a need to ensure that the appropriate action has been taken.

The application form for partners to register for Class 2 NICs and Self Assessment is available here:-

<https://online.hmrc.gov.uk/shortforms/form/SA401?dept-name=&sub-dept-name=&location=40&origin=http://www.hmrc.gov.uk>

Sleeping and inactive Limited Partners who are not already paying Class 2 NICs should register on form SA401. Such partners should record the nature of the business being carried out at box 15 on the form as either Sleeping Partner or inactive Limited Partner.

Further guidance in respect of Small Earnings Exception is available here: -

<http://www.hmrc.gov.uk/working/intro/class2.htm>

Further guidance in respect of Deferment is available here: -

<http://www.hmrc.gov.uk/working/intro/employed-selfemployed.htm>

Payment of Class 4 NICs from 6 April 2013

HMRC now take the view that Sleeping and inactive Limited Partners are liable to pay Class 4 NICs because: -

- in order for there to be a partnership for the purposes of the Partnership Act 1890 the persons making up the partnership (whether General,

Sleeping or Limited Partners) will all be “carrying on a business in common with a view of profit”; and

- Section 15 of the Social Security Contributions and Benefits Act 1992 imposes no requirement that partners have to be active in the business.

Class 4 NICs is assessed annually but because HMRC has announced its revised view towards the end of 2012-13 tax year, Sleeping and inactive Limited Partners should account for Class 4 NICs liability, if any, for the 2013 - 14 tax year of assessment and for subsequent tax years.

General guidance in respect of Class 4 NICs is available here: -

<http://www.hmrc.gov.uk/working/intro/class4.htm>

Losses from earlier years, which have not yet been set against profits chargeable to Class 4 NIC, can be brought forward and set against Class 4 NICs profits from the same trade.

Further guidance in respect of losses in respect of Class 4 NICs is available in the National Insurance Manual and Helpsheet 220: -

<http://www.hmrc.gov.uk/manuals/nimmanual/NIM24610.htm>

<http://www.hmrc.gov.uk/manuals/nimmanual/NIM24615.htm>

<http://www.hmrc.gov.uk/helpsheets/hs220.pdf>

Class 2 & 4 NICs paid for years prior to the 2013-14 tax year

Some Sleeping and inactive Limited Partners may have paid Class 2 and 4 NICs for past years. As these contributions will have been correctly paid in accordance with the law, HMRC considers that such payers will not be entitled to a refund of Class 2 NICs or to any Overpayment Relief in respect of Class 4 NICs.

Voluntary payments of Class 2 and 4 NICs for years prior to the 2013-14 tax year

There may be instances where some Sleeping and inactive Limited Partners may wish to pay Class 2 and 4 NICs for years prior to the 2013-14 tax year in order to qualify for, or improve, contributory benefits, for example the basic State Pension. HMRC, in conjunction with DWP, will provide details in the summer of the arrangements for the payment of Class 2 and 4 NICs in these circumstances.