

**National Insurance and Self-employed Entertainers  
Response from the Low Incomes Tax Reform Group ('LITRG')**

**1 Executive Summary**

- 1.1 We welcome the opportunity to respond to HM Revenue and Customs consultation document on the future National Insurance Contributions (NICs) for self-employed entertainers.
- 1.2 We are encouraged to see that HMRC has held informal discussions with stakeholders across the entertainment industry in order to understand how the current regulations affect this group of people and the difficulties they face when applying the rules.
- 1.3 We would however draw HMRC attention to the Consultation on 'Simplifying the National Insurance processes for the self-employed' and suggest that the two be looked at in conjunction as any change to entertainer status following this consultation may also be affected by the outcome of the other.
- 1.4 We welcome a clearer system for all and especially so for those on low incomes so that they are fully aware of their tax and National Insurance (NI) obligations and are able to comply easily. Equally, where they are entitled, low income workers should be encouraged to apply for help in claiming benefits with ease and without having to engage a paid representative to plough through complex legislation and small print.
- 1.5 We also welcome any prospect for growth in the entertainment industry that might arise from clearer and fairer legislation in this area; this may in turn create more opportunities for jobs and for increases in entertainers' income. This needs to be balanced with protecting entertainers' access to contributory benefits and preserving, where appropriate, their current position as regards Universal Credit (UC) entitlement.

- 1.6 We understand and appreciate the reasons behind the proposals and acknowledge that the current regulations may not always work as they should. However, it is important that any proposed change should take full account of the social security benefit consequences so that any loss of rights to such benefits for entertainers is minimised and those on low incomes without savings do not lose out. We do not think that the favoured approach achieves that.
- 1.7 We welcome the chance to engage further in the future around the technical elements of any agreed changes as a result of this round of consultation.

## **2 About Us**

- 2.1 The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998 LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low income workers, pensioners, migrants, students, disabled people and carers.
- 2.2 LITRG works extensively with HM Revenue & Customs and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.
- 2.3 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

## **3 Question 1: *Do you agree that current NICs treatment of entertainers under the Social Security (Categorisation of Earners) Regulations 1978 needs to be changed?***

- 3.1 We agree that the current NI regulations for entertainers are cumbersome, create an administration burden for all in the industry and is sufficiently flawed to merit a change. However we do not agree that the reform currently proposed in this consultation paper is necessarily the answer as it will leave many in this group in a worse position from a benefits perspective.
- 3.2 The consultation surmises that in order to avoid the burdens of the NI process the industry is making key decisions on whether to employ or who to employ, which is having an adverse impact on UK entertainers and especially those starting out in the business or those of a lesser celebrity status and/or on low income. We are concerned about this and would welcome a change that would help an upturn in this area but this must be balanced against ensuring low income entertainers do not end up significantly worse off from a benefits perspective.
- 3.3 There are clearly difficulties in defining whether the entertainer should be subject to the entertainers' NI regulation (through a sometimes complex contract) and in defining the secondary contributor, so we agree that improvements are needed.

**4      Question 2: *Do you agree that self-employed entertainers should be removed from the Class 1 NICs regime? Please give reasons for your answer.***

- 4.1      It is clear that there has been a change in recent years to how entertainers are engaged and the contracts they sign up to have further developed so that contracts are now modelled to avoid this NI status confusion. This is creating a further burden for the industry. We would encourage simplification for all concerned and believe that deeming an entertainer as Self Employed (SE), no matter what their engagement, would be simpler for tax legislation purposes. However, it would appear that this would be financially detrimental for many from a benefits point of view when compared to the current position.
- 4.2      We have some reservations about the implications of this change in respect of those on a low income. Historically, payment of Class 1 contributions has provided a certain level of protection in terms of access to contributory benefits, such as contributory-based Job Seeker's Allowance (JSA), Statutory Maternity Pay, Statutory Sick Pay and so on. Taking up the option to move entertainers to the Class 2 NI regime will remove that protection. If this option is chosen, then we consider that the Government must accept their obligation to inform this group of the implications of the change in status so that they can consider making their own adequate provision, as with other self-employed workers.

**5      Question 3: *Do you agree that self-employed entertainers should be placed in the Class 2 and 4 NICs regime?***

- 5.1      We understand and appreciate the reasons behind the proposal that entertainers should be placed in the Class 2 and 4 NICs regime. However, as explained above, we are concerned that the benefit implications of this move could be significantly detrimental to many entertainers and leave them worse off financially in the long term. Whilst this would achieve simplification from a contributions perspective it would leave low income individuals in a worse financial position.
- 5.2      Our understanding is that under current NIC and UC rules, the entertainers would be treated as employed and hence DWP would receive some information about hours and earnings from the Real Time Information (RTI) feed into the UC systems once that information flow is fully established. It follows that should entertainers be moved to a wholly self employed status, as a result of the change in their NI contributory obligations, DWP would then class this group as self-employed for UC purposes, which could prove substantially more burdensome (due to monthly reporting of income by the claimant) and financially detrimental (due to loss of benefits) for those with fluctuating work patterns, periods of 'resting' and low incomes.
- 5.3      The change in treatment by DWP, from being treated as employed to self-employed, for UC purposes is a substantial one. It means that the entertainer would also become subject to the Minimum Income Flooring (MIF) which applies to those who are found to be 'gainfully self-employed' under UC. The MIF operates in such a way as to deem the claimant to be earning a minimum amount (in most cases 35 hours x National Minimum Wage less a notional amount of tax and NI) even though they may not have that amount of income in

real terms. The MIF can have consequences for any self-employed person who hits a difficult period in their profession or business, but it is particularly worrying for entertainers who (as acknowledged in the consultation) have variable hours of work together with long periods where they are out of work.

- 5.4 Current DWP guidance for UC suggests that entertainers are likely to be treated as gainfully self-employed even in periods where they are between jobs or 'resting' and therefore will be subject to the MIF, which will substantially reduce their benefit income after the first year. Given that UC incorporates several benefits including help with housing costs and disability costs, all elements would be affected by applying the MIF.
- 5.5 This can be contrasted with the current situation where entertainers would be able to claim contributory jobseeker's allowance or, if they don't have enough contributions, income-based jobseeker's allowance. Those eligible to apply for UC would be treated under the current rules by DWP as employed and therefore would get a higher amount of help when between jobs, out of work or during periods of lower earnings.
- 5.6 The other group that would lose out as result of this proposal are entertainers who currently qualify for contributory based jobseeker's allowance but who cannot get income-based JSA or UC because their savings or their partner's earnings exceed the threshold. They would lose access to this contributory benefit. This may be a necessary by-product of any change.
- 5.7 We consider that any changes must ensure that entertainers on low incomes without high levels of savings are no worse off from a benefits perspective. We therefore suggest that no proposal is implemented until further work is done jointly with DWP to fully understand the UC implications and to consider ways to protect the current UC position for those entertainers in need.
- 6 Question 6: *Do you have any other comments you would like to make about the information contained in this consultation document, or information which you believe is relevant to this consultation?***
- 6.1 Should HMRC's preferred option be adopted it would appear that female entertainers may suffer a loss of allowance under the Statutory Maternity Pay as they will no longer qualify and will need to claim the Maternity Allowance. We are concerned about this and would like to understand whether HMRC has any plans to conduct further research as to the extent of the numbers affected by and the impact of this change.

LITRG  
6 August 2013