



Tax returns and payments in administrations – correction

What you need to know

On 17 January 2024 we issued insolvency guidance stating that in administration the administrator should calculate the pro-rata proportion of income tax and NIC due for the post appointment period only, then deduct and account for that income tax and NIC only.

We apologise that this guidance was incorrect.

All the income tax and NIC deducted and due on any payslip issued to an employee after the relevant date of insolvency, including in administration, compulsory liquidation, creditors' voluntary liquidation, bankruptcy and sequestration should be paid to HMRC as an expense of the insolvency. This is because [Section 18 of the Income Tax \(Earnings and Pensions\) Act 2003](#) states that PAYE applies at: "the time the payment is made" or "the time when a person becomes entitled to payment of or on account of the earnings". All the income tax and NIC due at the time of payment should be returned to HMRC by the employer who made them. [EIM42270](#) provides further guidance on this.

We also advised that any PAYE and NIC owed by the company prior to the appointment of the administrator would be a secondary preferential claim against the company. We would like to take this opportunity to clarify that any unpaid amounts of income tax and primary employee NICs deducted by the company on payslips issued prior to the relevant date of insolvency are a secondary preferential claim against the company. However, secondary employer NIC is an unsecured, non-preferential debt. You can find more guidance about what HMRC taxes are secondary preferential in the order of priority and which are unsecured non-preferential debts in the [HMRC as a preferential creditor guidance](#).

What we need you to do

Where a payment to an employee covers both pre- and post-appointment periods, the administrator (or any other insolvency practitioner acting in an insolvency procedure where payment is made to an employee in the same circumstances) should deduct and account for all the income tax and NIC due for the payment period. [PAYE21130](#) outlines that a company's existing PAYE scheme should continue to be used for these post-appointment payments. A new PAYE scheme is not necessary.

Further questions

We have updated Insolvency [\(VAT Notice 700/56\)](#) guidance and [PAYE21130](#) with information relating to this process. If you have any questions about this Insolvency Bulletin, please direct them to R3 or your representative group who will take them forward with HMRC.