Representation from the Chartered Institute of Taxation for Finance Bill 2021-22 Public Bill Committee

Employment Taxes
Clauses 9-11; Clause 98

Executive Summary

Clause 9 – Liability of scheme administrator for annual allowance charge

While we welcome the policy intent of this measure we do have a concern regarding the hard-stop deadline being introduced for notices and suggest that the legislation be amended to address this point. We also recommend that the government review pensions tax legislation more generally to (among other things) rectify anomalies in the pensions tax regime for taxing lump sums from pension schemes.

Clause 10 – Increase of normal minimum pension age

We are not convinced that an increase to the NMPA is necessary or desirable. This said, if the NMPA is increased to 57 we suggest also increasing the upper age at which an individual can make tax relievable contributions from 75 to 77.

There are some issues with the provisions for 'block transfers' where someone has both Defined Contribution and Defined Benefits pension rights. We suggest consideration is given to addressing these to remove barriers to consolidation. These issues appear not to apply to individual transfers but the drafting is not clear and clarification is needed.

Clause 11 – Public service pension schemes: rectification of unlawful discrimination

We welcome the government's commitment to both remedy the identified age discrimination and mitigate the tax impacts arising from the proposed remedy. It is important that the government consult before laying the proposed regulations.

In a related issue, we understand that thousands of pension schemes are currently unable to pay millions of pension scheme members the benefits they are due because their legal advisers are advising that the law is unclear where a pension scheme undertakes a Guaranteed Minimum Pension (GMP) conversion to equalise pension benefits. The government should urgently review the legislation to ensure that it is workable, and amend it if required.

Clause 98 – Power to make temporary modifications of taxation of employment income

We welcome the introduction of this power to allow the government to temporarily amend income tax rules for benefits and expenses in emergencies. We encourage the government to exercise this new power to extend current temporary reliefs for another year. We also encourage the government to undertake a review of existing benefits and expenses legislation and make some specific suggestions.

Pensions

1. Clause 9 – Liability of scheme administrator for annual allowance charge

Overview

1.1. The annual allowance is the maximum amount of tax relieved pension savings that an individual can build up during a tax-year. The annual allowance charge is a tax charge a taxpayer must pay if they exceed the annual allowance, refunding to the Exchequer the excess tax relief they have received.

1.2. Clause 9 amends:

- the period within which an individual can give notice to their pension scheme to pay their annual allowance charge for previous tax-years (using a scheme known as 'Scheme Pays'); and
- the period within which a pension scheme administrator must provide information about a change to an individual's pension input amount (PIA).

CIOT Comments

1.3. While we welcome the policy intent to extend Scheme Pays to all individuals within scope of a retrospective annual allowance tax charge of £2,000 or more (who meet the conditions to qualify to use Scheme Pays) we do have a concern regarding the hard-stop deadline being introduced for notices under section 237B of Finance Act 2004.

1.4. Clause 9(3) introduces new section 237BA (Time Limit for notices under section 237B). Subsections 237BA(4)(b) and (5)(b) provide for a hard-stop deadline of '*the end of the period of 6 years beginning with the end of the tax year in question*' for both the scheme administrator providing an individual with information about a change to their pension input amount and the individual (member) giving notice to the scheme administrator to pay their annual allowance charge (Scheme Pays).

1.5. The result of these two subsections is that it is possible for the scheme administrator to issue a statement with a change to the PIA in line with the legislation (per section 237BA(3)(a) and (4)(b)) but after, say, 5 years, 11 months and 30 days – meaning that the member would then have just one day to make a Scheme Pays election and give notice to the scheme administrator that they want to do so.

1.6. We suggest that the legislation be amended to address this point. In this regard, given the hard deadline for the member's Scheme Pays election in new subsection 234BA(5)(b) of the '*end of the period of 6 years beginning with the end of the tax year in question*', we think that the scheme administrator hard deadline in new subsection 237BA(4)(b) for notifying a change to the PIA should be 3 months before the end of that period to give the member time to respond.

1.7. We also recommend that the government review pensions tax legislation more generally to:

- Rectify anomalies in the pensions tax regime for taxing lump sums from pension schemes[1];

[1] For example, a payment on an employee's (or ex-employee's) death is chargeable under Section 394 of ITEPA 2003 as a relevant benefit from an Employer-Financed Retirement Benefits Scheme. But a payment made further to a qualifying death-in-service insurance policy is usually tax-free. Another result of these anomalies is that an ex gratia payment paid by an employer on the death of an employee by 'natural causes' is treated differently to an equivalent payment on the 'accidental' death of an employee. Further explanation on these and some further examples are included in the CIOT's Budget representation on Employment Taxes and Pensions Tax Regime - www.tax.org.uk/ref854

- Improve pension scheme administration by fixing problems with scheme block transfers and Guaranteed Minimum Pension (GMP) sex equality equalisation conversions; and
- Review the Money Purchase Annual Allowance (MPAA) rules to allow individuals who have had to access their pension savings during the pandemic to recommence saving for their retirement without the contribution restrictions imposed by the MPAA

1.8. One area that has been reviewed recently is pension tax relief administration. We welcome the government's announcement in the October Budget of a solution to the problem of pension inequality for low income workers, which the Institute's Low Incomes Tax Reform Group (LITRG), the pensions industry, the TUC and others have campaigned on. However (a) the process for top-up payments must be made as straightforward as possible to encourage take up, and (b) we are disappointed that the change will only come into effect from 2024/25.

2. Clause 10 – Increase of normal minimum pension age

Overview

2.1. The normal minimum pension age (NMPA) is the age below which a registered pension scheme must not normally pay any benefits to members (unless they are retiring due to ill health). Originally introduced in April 2006, it was increased from 50 to 55 in April 2010.

2.2. Clause 10 increases the NMPA from age 55 to 57 in 2028, except for members of uniformed services pension schemes, where the NMPA will remain 55.

CIOT Comments - general

2.3. We understand the policy intention is that the NMPA should remain 10 years below state pension age. We are not, however, convinced that an increase to the NMPA is necessary or desirable and there is no obvious risk to the Exchequer in permitting workers to retire at age 55 and draw on their pensions from that age, in line with current rules.

2.4. This said, if the NMPA is increased to 57 we suggest also increasing the upper age at which an individual can make tax relievable contributions from 75 to 77 (so that the age threshold remains 10 years above the state pension age). If this measure is to support '*fuller working lives*' and '*encourage individuals to save longer*' then '*with increasing life expectancy*' (per paragraph 23 of the Explanatory Note) individuals should be able to contribute at a greater age, should they wish (and be in a position) to do so.

CIOT comments – Block transfers

2.5. We note that the block transfers provisions at new paragraph 23ZB(6) require the transfer of all of a member's benefits, so transfers of Defined Contribution (DC) rights without Defined Benefits (DB) rights or vice versa will lose protection.

2.6. There is, in our opinion, an increasing desire by government, trustees and sponsoring employers for the DC sections of 'hybrid-type' schemes (where DB and DC rights are side by side in a scheme rather than genuine hybrid schemes) to be consolidated in larger schemes such as master trusts. However, where a member has both DB and DC rights (separately) then it is not possible to retain fully protected NMPAs for the transferred DC rights as these are classified as partial rather than block transfers and only ring-fenced protection on the individual transfer basis would apply. The existing restrictive block transfer provisions, in both the existing

2010 and this legislation, are, we believe, practical barriers to consolidation. We suggest further consideration is given to making such transfers easier.

2.7. In comparison, we note that individual transfers (new paragraph 23ZC) appear to work at an arrangement level rather than a scheme level, so it appears that an individual could transfer just their DC benefits and remain protected (and transfer protection). For example, paragraph 23ZC(3)(a) states that '[the funds] *were sums or assets held by the transferor scheme for the purposes of, or representing accrued rights under, an arrangement relating to a member of the transferor scheme*'. This suggests to us that individual transfers operate at an arrangement level, rather than scheme level, so transferring DC rights only from a hybrid scheme where a member also holds DB rights does not lose them the protection. This being said, the drafting around individual transfers is not clear and clarification on this point would be welcomed.

3. Clause 11 – Public service pension schemes: rectification of unlawful discrimination

Overview

3.1. Clause 11 provides the government with the power to make regulations to address the tax impacts that will arise as a consequence of the *McCloud* judgment.

3.2. In December 2018, the Court of Appeal ruled that younger members of the Judges' and Firefighters' Pension schemes had been discriminated against because protections introduced for older members when public service pension schemes were reformed in 2014 and 2015 did not apply to them. This age discrimination is being removed (via the current Public Service Pensions and Judicial Offices Bill) but, as a consequence, unless existing legislation is modified, members of these schemes could incur:

- income tax charges on compensation received,
- lifetime allowance charges if their revised pension rights exceed the lifetime allowance, and
- annual allowance charges if their revised annual required contributions or future catch-up contributions cause their pensions contributions for a tax year to exceed their annual allowance for that year.

3.3. The clause therefore provides the Treasury with the power to make regulations to, for example:

- provide for an exemption to a tax charge on the compensation an individual may receive if, following the remedy, they are owed money,
- allow an individual to protect their pension rights from lifetime allowance charges calculated on the higher of the two pension choices available to them,
- provide for an additional annual allowance to be available so that an individual will not pay more annual allowance charge than they would have done if they had accrued their chosen benefits in the relevant tax years,
- where a scheme has paid lifetime allowance or annual allowance charges on behalf of the individual (Scheme Pays), but that accrual is now under a different scheme, for the payment to be deemed to have been paid by the latter scheme, and
- ensuring that payments of pensions and lump sums that would have been authorised payments for tax purposes had they been made at the relevant time, are treated as meeting the conditions to be authorised.

CIOT Comments

3.4. We welcome the government's commitment to both remedy the identified age discrimination and mitigate the tax impacts arising from the proposed remedy. While the legislation gives the Treasury wide powers to make regulations this is necessary if the tax impacts on affected members of public service pension schemes is to be mitigated. The amendments to existing legislation that will be required to mitigate the tax effects, and the reporting mechanisms in respect of the various remedies that will arise, need to be consulted on before proposed regulations are laid.

CIOT further comments - Guaranteed Minimum Pension (GMP) conversions – sex inequality in pension schemes

3.5. While the government's actions to rectify the age discrimination noted in the McCloud case are laudable, we understand that thousands of pension schemes are currently unable to pay millions of pension scheme members the benefits they are due because their legal advisers are advising that the tax and pensions law is unclear where a pension scheme undertakes a 'GMP' conversion to equalise pension benefits.

3.6. Guaranteed Minimum Pension (GMP) conversion is a way to remove or amend GMP features, using legislation enacted in 2007. In particular, pension schemes are required to equalise benefits paid to men and women where the scheme provided for different types of benefits to each. While the details of GMP equalisation are complex, and we have not repeated them here, they are well known. The legislation allows pension schemes to simplify and equalise benefits, which helps members understand their benefits better, speeds up processing times, keeps administrative costs down, and ultimately puts them on a more secure long-term basis.

3.7. We believe that the government should review the conversion legislation to ensure that it is workable, and amend it if required, and also confirm that where a pension scheme equalises their members' entitlements under the GMP conversion legislation that no taxable event arises under the pension tax regime (or amend the legislation to provide for this). We believe that action is urgently needed on this matter so that pension schemes can pay their members the benefits they are entitled to.

Temporary powers in disaster or emergency

4. Clause 98 – Power to make temporary modifications of taxation of employment income

Overview

4.1. Clause 98 provides the government with the power to make regulations to temporarily modify Parts 3 (earnings and benefits), 4 (exemptions) and 5 (allowable deductions) of the Income Tax (Earnings and Pensions) Act 2003.

4.2. In effect, this will allow the Treasury to, for example:

- Exempt benefits in kind of a specified description from income tax,
- Change the qualifying conditions for exemptions on benefits in kind,
- Exempt specified reimbursements from the charge to income tax, and
- Provide relief for specified expenses.

4.3. This is being introduced to give ministers greater ability to introduce necessary reliefs in the event of future disasters or emergencies of national significance.

4.4. When the pandemic hit last year, employers found themselves having to consider the tax implications of a number of additional expenses (eg reimbursing employees the cost of equipment so they could work at home, or paying for employee's covid tests). Under tax laws at the time, such payments could have created benefit in kind charges for both employees and employers. HMRC introduced time-limited measures to exempt both these areas from benefit in kind charges but this clause will make it easier for HMRC to act quickly in future.

CIOT Comments

4.5. We welcome the introduction of this power to allow the government to swiftly react to emergencies and temporarily amend the strict income tax rules for benefits and expenses so as to alleviate unintended effects of the tax legislation where employers 'do the right thing' to help their employees or employees incur additional costs in carrying out their work.

4.6. We encourage the government to, in due course, exercise this new power and extend the current temporary reliefs exempting a number of benefits in kind, changing the qualifying conditions of certain benefits, and providing relief for specified expenses and reimbursements, which are due to expire on 5 April 2022, for another year.

4.7. We would also encourage the government to undertake a review of existing benefits and expenses legislation to:

- Provide for a deduction for additional household expenses where an employee opts to work from home;
- Clarify the business travel rules where an employee works from home (either full or part-time) and occasionally travels to their employer's premises;
- Amend the trivial benefits exemption so that employer reimbursements have the same tax treatment as directly provided employer benefits;
- Review Parts 3, 4 and 5 of the Income Tax (Earnings and Pensions) Act 2003 more generally so as to remove the distinction between 'employer pays' and 'employer reimburses'; and
- Enhance the Enterprise Management Incentives (EMI) eligibility criteria to help businesses recover and grow post-pandemic.

5. The Chartered Institute of Taxation

5.1. The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with 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. 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.

5.2. 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. The CIOT's comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

5.3. The CIOT's 19,000 members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

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