Representation from the Chartered Institute of Taxation
for Finance Bill 2021 Committee Stage

Clauses 21-29 – Employment Taxes and Pensions

Public Bill Committee – Clauses 21, 22, 23, 27 and 29

Committee of the Whole House – Clauses 24, 25, 26 and 28

Executive Summary

Clause 21 – The amendment to exclude from the Off-Payroll Working rules payments that are already taxed as employment income is welcome, but in our view the scope of the exclusion is not as wide as it should be.

Clause 22 – An unobjectionable tweak to the rules on taxation of termination payments.

Clause 23 – This measure to stop treating use of an employer-provided van (so long as it emits no CO2) as a taxable benefit for the employee appears to achieve its objective.

Clause 24 – Extends a welcome time-limited exception for participants of enterprise management incentives schemes who are not able to meet the necessary working time commitment as a result of the coronavirus pandemic.

Clause 25 – A welcome relaxation of the requirement that, for an employer-provided cycle (and cycle safety equipment) to be an exempt benefit-in-kind, the employee must use the cycle/equipment mainly for qualifying commuting and/or business journeys. But in our view the relaxation should include cycles and equipment provided after 20 December 2020, where there is an intention to use the cycle for qualifying journeys as and when the employee is able to return to their normal workplace.

Clause 26 – A welcome tax exemption for advance payments, or reimbursements, made to employees in respect of the cost of obtaining qualifying antigen coronavirus tests. We suggest the exemption includes the cost of travel to the test too, and that it should extend to antibody tests. Additionally, we encourage the government to review its approach to employers paying for, or reimbursing the cost of, vaccines generally.

Clause 27 – The alignment of the treatment of payment of statutory parental bereavement pay with that of other statutory payments is unobjectionable.

Clause 28 – Freezes the pensions lifetime allowance. We encourage the government to review the pensions tax regime as a whole with a view to making it less complex.

Clause 29 and Schedule 5 – Aligns the tax treatment of collective money purchase pension schemes with other UK pension schemes.

Clause 21 – Workers' services provided through intermediaries

Overview

From 6 April 2021, following legislation in Finance Act 2020 amending Chapter 10 of Part 2 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003), responsibility for determining whether an engagement falls within the off-payroll working (OPW) rules (sometimes known as IR35) moved from an intermediary (such as the worker's personal service company) to the private sector client (the business which requires the worker's services). The party which pays the intermediary – which may be the client, or an agency, depending on the commercial arrangements – is now required to operate PAYE and NICs as appropriate. (This rule has been in place for the public sector since 2017.)

This clause amends ITEPA 2003 again to address an unintended effect that section 61O (NB. This is 61O, between 61N and 61P, not six hundred and ten!), as originally enacted in Finance Act 2020, could capture a wider range of companies providing a worker's services to a third party, such as umbrella companies, employers seconding employees and agencies providing workers in circumstances where the other conditions of Chapter 10 are met.

The clause also introduces a Targeted Anti-Avoidance Rule (TAAR) to prevent avoidance arrangements seeking to circumvent the conditions for a company or partnership to be an intermediary for the purposes of Chapter 10 and makes two further technical changes.

CIOT comments

The engagement with HM Revenue & Customs that arose following identification of the potentially widened, and unintended, effect of Section 61O was very welcome.

The amendment to section 61O effectively replaces subsections 61O(1)(b)(ii) and (iii) with a new provision whereby if the worker does not have a material interest in the intermediary (the company for which they are directly employed) the worker must have received, or have a right or expectation to receive, a chain payment from the intermediary and the chain payment does not, or will not, otherwise constitute employment income.

This amendment ensures that payments that are already employment income, such as from umbrella companies, employment agencies or, indeed, where an employee is seconded, are excluded from the OPW rules.

One aspect of these amendments which has not been addressed is where a worker is engaged by an agency but is not an agency worker under ITEPA 2003, section 44, as the condition of supervision, direction or control (SDC) does not apply (but quarterly reporting under the Employment Intermediary Reporting Rules would). These amendments do not preclude Chapter 10 from applying in such an instance. As a result an agency worker, who has been determined by the employment agency as not subject to the agency workers legislation, will also have to be judged by the end client as to whether the OPW rules apply. This is likely to lead to confusion and uncertainty as to which rules takes precedence and who has adjudged what to whom! We suggest that the legislation is amended to exclude employment agencies from the definition of corporate intermediary in this situation.

It is also unclear why it is necessary for new sections 61O(4A) and (4B) to define '*non-material interest*' in this way, when it could simply be defined as a person '*not having a material interest*' (material interest is already defined by section 51(4) and (5)).

The amendment to section 61U extends the obligation to notify the deemed employer (usually the entity directly above the worker's intermediary) as to whether one of the conditions in Section 61N regarding whether the intermediary is an intermediary to which Chapter 10 applies to include both the worker and the worker's intermediary. Since the worker will not always know if one of the conditions is met or may not realise that they are required to provide this information, expanding the requirement to include the intermediary, who may be better placed to confirm if one of the conditions is met, is a welcome amendment.

Amending section 61V follows from the amendment to section 61U and ensures that any UK based party in the chain that provides fraudulent information can be held liable for their actions.

New section 61WA introduces a targeted anti-avoidance rule (TAAR) into Chapter 10. This is intended to prevent arrangements that may seek to circumvent the new provisions in section 61O. We understand that HMRC believe that a TAAR is necessary as they see the risk that some in the labour market will attempt to get around the rules, particularly at the lower end of the market and with the extension of the OPW rules to the private and voluntary sectors. We acknowledge that avoidance of PAYE and NICs is a significant concern and section 61WA appears to be consistent with definitions of tax avoidance schemes used elsewhere (for example, Finance Act 2014, section 234, which applies to promoters of tax avoidance schemes).

Clause 22 – Payments on termination of employment

Overview

Changes were made to the taxation of termination payments (redundancy payments) in April 2018, including the introduction of Post-Employment Notice Pay (PENP) to ensure that all contractual, customary and non-contractual payments in lieu of notice (PILONs) are subject to income tax and NICs as earnings consistently.

This clause is intended to improve the fairness and clarity of the PENP legislation by removing two known inconsistencies in the tax treatment of PENP. It provides a new method to calculate PENP for employees paid in equal monthly instalments where the employees' notice period is not a whole number of months. It also brings PENP within the charge to UK tax for individuals who are non-resident in the year of termination of their UK employment.

CIOT comments

HMRC has previously exercised the managerial discretion available under the Commissioners for Revenue and Customs Act 2005 to provide for an alternative calculation for PENP for use where it is advantageous to the employee. This amendment will make it mandatory for all monthly payrolls with equal payments to use this method rather than just when it is advantageous to the employee. While this simplifies calculations for employees, it will be detrimental to some ex-employees!

Clause 23 – Cash equivalent benefit of a zero-emissions van

Overview

When a van is made available to an employee by reason of their employment and is also available for their private use then unless certain conditions are met the benefit of the van is treated as earnings from the employment, on which income tax (by the employee) and Class 1A NICs (by the

employer) must be paid. From 2010 to 2015 zero emissions vans were exempt from these payments but Finance Act 2015 introduced a charge (a percentage of the standard charge for conventionally-fuelled vans – 80% for 2020-21). This change returns the van benefit charge to zero, with effect from 6 April 2021. It also allows the charge to be amended/increased by secondary legislation in future years.

CIOT comments

The amendments achieve their stated objective. We note that there is no provision for secondary legislation to vary the cash equivalent based on, for example, the range of a zero-emissions van. Any amendment beyond an absolute figure for the cash equivalent would require primary legislation.

Clause 24 – Enterprise management incentives

Overview

The rules for Enterprise Management Incentives (EMI) schemes contain strict conditions about the time spent working in the business. Finance Act 2020 introduced a time limited exception so that participants of EMI schemes are not disqualified from relief as a result of taking leave, being furloughed or working reduced hours because of Coronavirus. This clause extends the exception (which originally took effect from 19 March 2020) until 5 April 2022.

CIOT comments

The strict requirements of ITEPA 2003, Schedule 5, paragraph 26 are that an employee's committed time to the employer must equal or exceed 25 hours a week or, if less, 75% of the employee's working time.

The current pandemic has made those requirements difficult to meet for some employees, especially those that are vulnerable or have responsibilities to other family members, so are taking unpaid leave or are furloughed.

The modification of the requirements such that any employee who is not required to work for '*reasons connected with*' the coronavirus pandemic can count that time as committed time is therefore welcome.

We note that '*reasons connected with*' coronavirus is a very broad term, and it would be useful to have guidance on precisely what this covers and any limitations.

Clause 25 – Cycles and cyclist's safety equipment

Overview

Another coronavirus-related measure. There is a tax exemption for the employer provision of cycles and cyclist's safety equipment to support employers in promoting healthier journeys to work and to encourage green commuting. One of the conditions of the exemption is that the cycle or cycling equipment provided by an employer should be used mainly for qualifying journeys (to or from work or in the course of work). This clause relaxes this requirement such that employees who have received a cycle or cyclist's safety equipment on or before 20 December 2020, will not have to meet the qualifying journeys condition until after 5 April 2022.

CIOT comments

Removing the '*mainly*' requirement for the duration of the coronavirus pandemic, when many employee's normal working arrangements have been disrupted, is a welcome and pragmatic move.

We are aware that the cut-off point of 20 December 2020 for the provision of cycles/equipment is proving troublesome to some employers, who would like to allow their employees to join their schemes now, in readiness for the full lifting of lockdown and getting back to work. However, if they do, the employee may be liable to tax on the benefit-in-kind.

Anyone who is provided with a cycle now, but whose place of work us currently closed due to COVID-19, would potentially be taxable on their cycle if they do not return to the workplace as quickly as anticipated (such that a majority of their use of the cycle in the tax year is not qualifying use).

Our understanding is that HM Revenue & Customs will apply the qualifying journeys condition across the duration of the provision of the cycle to an employee rather than per tax year. However, it is impossible to predict what future working conditions will be like and whether employees will be able to meet the qualifying journeys criteria over the duration of provision if provided now.

We suggest, to encourage continuing take up of the cycle-to-work scheme, that the relaxation of the qualifying journey requirement should also apply to cycles and equipment provided after 20 December 2020, where there is an intention to use the cycle for qualifying journeys as and when the employee is able to return to their normal workplace.

Clause 26 – Exemption for coronavirus tests

Overview

This clause enacts the government's previously announced income tax exemption for advance payments, or reimbursements, made to employees in respect of the cost of obtaining qualifying antigen coronavirus tests. An equivalent NIC disregard has been legislated for separately. It applies to the tax years 2020-21 and 2021-22.

CIOT comments

The income tax exemption is very welcome, as is the announcement that the exemption will apply to relevant payments made in 2020/21 (ie. before the new exemption was announced and the legislation is passed).

This exemption is slightly broader than the employer-provided coronavirus antigen test exemption introduced last year, which was made under regulations that required tests to be made available to '*employees generally on similar terms*'. This new exemption for advance payments and reimbursements is more flexible than the employer-provided tests exemption.

This said, we think that the '*cost of obtaining qualifying antigen coronavirus tests*' should include the cost of travel to the test too.

We note that the exemption for coronavirus antigen tests does not extend to antibody tests, and we consider that any COVID test should be tax exempt, irrespective of whether an antigen or antibody test.

We would also urge the government to review its approach to employers paying for, or reimbursing the cost of, vaccines. For example, many employers provide flu vaccine shots or flu vaccine vouchers each autumn. Generally, these can be exempted under the trivial benefits rules. However, if an employee pays for the vaccine (which in many instances is the most practical option), any reimbursement by the employer is taxable. How the vaccine is paid for should not dictate the tax treatment, and considering that ongoing coronavirus vaccinations might be required (the cost of which may exceed the trivial benefits exemption limit), the treatment should be aligned.

Clause 27 – Optional remuneration arrangements: statutory parental bereavement pay

Overview

Statutory Parental Bereavement Pay (SPBP) was introduced in April 2020. This measure has been introduced to ensure that the payment will not be treated as a variation in contract for certain long-term salary sacrifice arrangements, in line with other statutory payments, so that recipients of these payments are not disadvantaged. The relevant long-term arrangements include: certain employer provided vehicles, employer provided living accommodation and relevant school fees arrangements.

CIOT comments

We have no comments on these changes, which appear to achieve their objective.

Clause 28 – Freezing the standard lifetime allowance

Overview

The lifetime allowance is the maximum amount of tax relieved pension savings that an individual can build up over their lifetime. It has been linked to the Consumer Price Index since 2018-19. This clause freezes the allowance (at £1,073,100) by removing the indexation for the tax years 2021-22 through to 2025-26.

CIOT comments

The clause achieves its objective of freezing the pensions lifetime allowance until April 2026.

This said, amendments have been made to the UK's pensions tax regime every year since it was first legislated for in Finance Act 2004, after many years of work between government departments and the pensions industry to rationalise the pensions rules to provide a simplified and stable regime for the future. It is now 15 years since that new regime took effect (in April 2006) and much of the desired simplification has, we believe, been lost. This change will bring the complexity of dealing with the impact of the lifetime allowance to bear on more taxpayers.

It does seem to us that, as it stands, the pensions tax regime is no longer straightforward, and that the current rules and legislation are now more complex than the rules they replaced.

Consequently, we think the government should consultatively review the pensions tax regime with two aims in mind: (i) to consider to what extent the simplicity aimed for in 2004 has been lost, and (ii) what recommendations can be made to restore, so far as possible, a simple to understand, and operate, pensions tax regime, balancing the objectives of the pension reliefs and their cost in the context of the post-COVID public finances in an open and transparent way.

Clause 29 and Schedule 5 – Collective money purchase benefits

Overview

Collective money purchase pension schemes are a new type of pension provision introduced by the Pension Schemes Act 2021. Collective money purchase arrangements are defined as money purchase arrangements but work in a different way to other benefits. As a result, they do not replicate any of the existing types of benefits precisely.

This clause and schedule set out the tax treatment of collective money purchase schemes, enabling them to operate as UK registered pension schemes, in the same way that existing UK registered pension schemes can operate, as set out in the Finance Act 2004.

CIOT comments

We have no comments on these changes.

The Chartered Institute of Taxation

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