Representation from the Chartered Institute of Taxation for Finance Bill 2023-24 Public Bill Committee

Employment Taxes

Clause 13: Enterprise management incentives: time limits

Clause 14 and Schedule 9: Provision in connection with abolition of the lifetime allowance charge

Clause 15: MPs' pension scheme etc: rectification of discrimination

Clause 17: PAYE regulations: special types of payer or payee

Chartered Institute of Taxation.

Executive Summary

Clause 13 provides a welcome alignment of the notification time limit for Enterprise Management Incentives (EMI) options with that of other employment-related share schemes.

Clause 14 completes the abolishment of the pension lifetime allowance and sets out the new tax treatment of lump sums and lump sum death benefits paid from registered pension schemes. We recommend deferring the introduction of the new rules from 6 April 2024 to 6 October 2024 to enable pension scheme administrators to meet their fiduciary duties of providing information to members about their retirement options at least four months before their normal pension age.

Clause 15 will allow regulations to be laid to address the tax impacts of a rectification exercise to remedy age-related discrimination in respect of parliamentarians. We draw attention to an earlier inequity where a remedy for penal tax charges has not yet been put in place.

Clause 17 is a sensible measure to allow regulations to be laid that will enable HMRC to set off amounts of tax already paid by a worker and their intermediary on income from engagements under the Off-Payroll Working rules against a subsequent PAYE liability of their deemed employer.

Clause 13: Enterprise management incentives: time limits

Under the Enterprise Management Incentives (EMI) scheme smaller companies can offer their employees share options (up to a limit of £3 million on the total value of shares on which there are unexercised options). While there is no requirement for an EMI scheme to be registered with HMRC, notice must be given to HMRC when options are granted. Providing the scheme rules are complied with there is no income tax or NICs to pay on the exercise of the option.

Clause 13 extends the time limit for an employer company to notify HMRC of a grant of EMI options from 92 days after the date of the grant of the option to 6 July following the end of the tax year in which the option was granted. The amendments will have effect in relation to share options granted on or after 6 April 2024.

CIOT comments – This is a welcome change. It aligns the notification time limit for EMI options with that of other employment-related share schemes.

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Clause 14 and Schedule 9: Provision in connection with abolition of the lifetime allowance charge

Under the pensions tax regime up to 2022/23, if an individual received pension benefits (benefit crystallisation event (BCE)) in excess of the lifetime allowance (LTA) (or such higher allowance that may be protected by transitional provisions) an LTA charge applied and the excess was taxed at 25% (if used to buy a pension) or 55% (if taken as a lump sum). The LTA was abolished through Finance (No. 2) Act 2023. As a result, for 2023/24 there is no LTA charge but, instead, a tax charge at the individual's marginal rate of tax applies on lump sums received that would previously have been subject to the LTA charge. Additionally, all registered pension schemes are able to offer a tax-free pension commencement lump sum (PCLS) of up to 25% of the fund, subject to an overriding maximum of 25% of the lifetime allowance (LTA) (or such higher allowance protected by transitional provisions). For 2023/24 any PCLS in excess of the permitted maximum will be taxed at the individual's marginal rate of tax.

Clause 14 is intended to complete the abolishment of the LTA and sets out the new tax treatment of lump sums and lump sum death benefits paid from registered pension schemes. The changes have effect on or after 6 April 2024.

CIOT comments

Timetable of implementation – The new rules are to take effect from 6 April 2024. Ideally most schemes would want to have updated their communications to accommodate the new rules by, at least, December 2023, because, for example, Direct Contribution (aka Money Purchase) schemes need to provide information to members about their retirement options at least four months before their normal pension age (and many would prefer to send that information out six months in advance). But the Finance Bill will not be passed by Parliament before at least January 2024 and HMRC cannot publish final guidance until after the Finance Bill receives Royal Assent (although we welcome HMRC publication of guidance newsletters in the interim). This presents issues for pension administrators in meeting their fiduciary duties. We would prefer to see a delay in implementation to October 2024 to avoid delays in schemes processing benefits, and possibly making inadvertent mistakes. In this regard we suggest amending Schedule 9, Part 6, paragraph 124 (Commencement) from:

"*The amendments made by section 14 and this Schedule have effect for the tax year 2024-25 and subsequent tax years*."

To:

"The amendments made by section 14 and this Schedule have effect from 6 October 2024 and for subsequent tax years."

The legislation – The legislation included in the Finance Bill is much changed from the draft published for consultation in summer 2023. We believe that it would benefit from further scrutiny and expect industry representatives to be discussing the detail with HMRC during January. An initial review suggests that the Pension Commencement Excess Lump Sum (PCELS) legislation (that replaces the current lifetime allowance excess lump sum charge) will require some revisions if it is to meet its policy intent.

Guidance – As noted above early guidance on the Finance Bill provisions for the abolition of the LTA is key. And, if as we suspect, there will be some defects in the legislation that will need correcting, it will be important that all parties (whether that is the pension scheme administrators or the individual members) can rely on that guidance, even if it is subsequently found to diverge from the legislation.

Lump sums – We welcome the change to the legislation that reinstates the status quo and ensures that trivial commencement lump sums (TCLS) and small lump sums received by individuals will continue to not be counted towards the tax-free lump sum thresholds.

Rounding-up the tax-free allowances – We acknowledge that the Government have stated they wish for the limits (of £268,275 and £1,073,100) to remain based on the current LTA. We also understand that the intention is for the limits to be frozen. We would, however, suggest, to simplify both members' understanding of their options and the administration of pensions, taking the opportunity to round up the tax-free allowances. Alternatively, the Government should at least consider raising the allowance in line with inflation (and rounding up as appropriate).

Clause 15: MPs' pension scheme etc: rectification of discrimination

Clause 15 provides the Treasury with the power to make regulations to address the tax impacts of a rectification exercise to remedy age-related discrimination when pensions were reformed under pension schemes for Members of Parliament from 2015, and under pension schemes for members of the Senedd and members of the Northern Ireland Assembly from 2016. The changes are capable of having retrospective effect to ensure that individuals are, as far as possible, put in the tax position they would have been in had the discrimination not occurred.

Under the pensions tax regime where a registered pension scheme changes an individual's pension entitlement tax charges can arise (for example, Lifetime Allowance (LTA) charge, Annual Allowance (AA) charge, unauthorised payments charge, etc).

Under the 2015 reforms, MPs who were close to retirement remained in the final salary section, while the remaining active members started to accrue pension rights in a new career average section. In 2016 similar reforms were made to the Members of the Senedd Pension Scheme and the Assembly Members Pension Scheme in Northern Ireland. Reforms were not made to the pension scheme for members of the Scottish Parliament.

These reforms were similar to those that had been made to the pension rights of members of public service pension schemes in 2015. In December 2018, the Court of Appeal (in the 'McCloud judgment') ruled that younger members of the Judges' and Firefighters' Pension schemes had been discriminated against because transitional protections introduced for older members when public service pension schemes were reformed in 2014 and 2015 did not apply to them. This age discrimination was removed via legislation and Finance Act 2022 legislated separately to ensure members of those schemes did not suffer tax charges as a result.

CIOT comments – This clause implements a similar remedy to that adopted following the McCloud judgment. As such, we welcome the Government's commitment to both remedy the identified age discrimination and mitigate the tax impacts arising from the proposed remedy.

It would be helpful if the minister could provide an update on progress towards implementing the McCloud remedy for public sector workers. By what date do the Government expect all affected public sector workers to be compensated?

It would also be helpful if the minister could provide reassurance that there are no further pension schemes where the McCloud judgment has relevance and where they have not yet legislated in respect of the tax impacts of any consequent changes.

Guaranteed Minimum Pension (GMP) conversions – The GMP rules were abolished from 6 April 1997. However, past accruals remain and there are specific rules relating to the accrual and payment of GMPs. For example, the Pensions Schemes Act 1993 and the Pension Schemes (Northern Ireland) Act 1993 require occupational pension schemes to calculate and pay GMPs differently depending on a person's sex. A woman's GMP accrues at a greater rate than that of a man in recognition that, at the time, a woman's working life for State pension purposes was five years shorter than that of a man. As a result, where a woman and a man have an identical work history, the woman's overall GMP will be greater than that of the man. A woman is also entitled to receive her GMP at an earlier age (age 60) than a man is entitled to receive his (age 65) creating further differences between GMPs payable to men and women. As a result of different rates of indexation or revaluation applying at different times, a woman's GMP will typically start out as higher than that for a comparable man, but the value of the man's GMP may overtake that of the woman's over time.

These differences create inequalities in the amount of pension income received by both men and women who have GMPs depending on individuals' ages and circumstances. However, as provided in the Equality Act 2010, pension schemes are required to pay equal pensions to men and women for accruals from 17 May 1990. Schemes therefore need to correct for inequalities in peoples' pension income caused by GMPs accrued from this date. In November 2016 the then Government consulted on a methodology for equalising pensions for the effect of GMPs by converting these benefits using the conversion legislation in the Pension Schemes Act 1993. GMPs can be equalised and converted into other benefits using a process involving valuation, equalisation and conversion.

GMP conversion offers a means by which a scheme can convert its GMPs, either for an individual member, a group of members or the whole scheme into other scheme benefits, creating administrative easements. The Pension Schemes (Conversion of Guaranteed Minimum Pensions) Act 2022 made provision for the amendment of pension schemes so as to provide for the conversion of rights to a GMP but there remain some snags in the pensions tax rules which we believe could cause a loss of individual member protections against tax charges relating to the Lifetime Allowance and in some cases trigger an Annual Allowance excess tax charge.

While we welcome the remedy introduced by Clause 15 and the previous remedy for pension entitlement rectifications arising from the McCloud judgment, we remain concerned that a similar solution was not implemented following the High Court's decision in the *Lloyds Bank* case that requires schemes to equalise benefits earned in the period between 17 May 1990 and 05 April 1997 to correct for the inequalities of GMPs despite legislation providing for the conversion of GMP rights being enacted in 2022. We believe that to ensure that no tax charges arises as a result of a GMP conversion a similar remedy as provided for by Clause 15 should be implemented.

Clause 17: PAYE regulations: special types of payer or payee

The Off-Payroll Working (OPW) rules (sometimes known as IR35) prevent individuals from paying substantially less tax and NICs by operating through an intermediary, such as a personal service company (PSC) or partnership, than they would have to pay if they were employed directly by a public sector body or by a large or medium-sized private sector body. Where the OPW rules apply the end client, or an appropriate agent in the supply chain (the deemed employer), is responsible for deducting and paying to HMRC the tax and NICs on relevant payments made to the intermediary. Where the deemed employer fails to deduct the tax and NICs, for example because the end client mistakenly believed the engagement was outside the OPW rules, they are liable for the tax and NICs that should have been deducted. This can result in taxes already paid by the intermediary and the worker being repayable to them.

Clause 17 gives HMRC the power to make regulations that will enable it to set off amounts of tax already paid by a worker and their intermediary on income from engagements under the OPW rules against a subsequent PAYE liability of their deemed employer. The provision comes into effect from 6 April 2024 and can apply to deemed direct payments made on or after 6 April 2017.

CIOT comments – The CIOT has argued for this set-off to be legislated for since the OPW rules were first introduced in 2017. Clause 17 will enable regulations to be laid that will remedy the present situation whereby in OPW compliance settlements between HMRC and public bodies, the result is that the public body effectively bears all the tax out of public funds and the worker (and their limited company) is entitled to reclaim the corporation tax, income tax (usually dividend tax) and (in certain circumstances) NICs they have paid.

The proposed solution of a set-off approach in cases where an end client has failed to deduct taxes under PAYE where a worker should have been deemed to be inside the OPW (IR35) rules but, for whatever reason, was treated as outside the rules is, we believe, the best approach. It will mean that corporation tax and income tax already paid by the worker and their limited company will not be repaid but will, instead, be set off against the PAYE liability due from the end client.

The Chartered Institute of Taxation

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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.

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