

Written evidence submitted by the Chartered Institute of Taxation (FB02)

Employment Taxes Public Bill Committee Clauses 7, 11 and 81

Executive Summary

Clause 7: Optional remuneration arrangements: arrangements for cars and vans

We agree the two amendments will achieve their aim, although we think the change on capital contributions could be achieved more simply.

Clause 11: Beneficiaries of tax-exempt employer-provided pension benefits

We believe the legislation will achieve its aim of widening the scope of the exemption to allow any individual, or a charity, to be the beneficiary of the employee's death or retirement benefits.

Clause 81: Construction industry scheme and corporation tax etc (Security Deposits)

We believe the enabling legislation will achieve its aim but we do have some concerns around HMRC's use of the security deposits legislation and think that there should be adequate safeguards in place to ensure the regime is only deployed where it is appropriate and proportionate to do so.

1. **Clause 7: Optional remuneration arrangements: arrangements for cars and vans**

Overview

1.1. This clause addresses two mistakes in the Optional Remuneration Arrangements (OPRA) rules that were enacted by section 7 and schedule 2 to the Finance Act 2017 by introducing amending legislation to:

- ensure that when a taxable car or van is provided through OPRA, the amount foregone, which is taken into account in working out the amount reportable for income tax and National Insurance Contributions (NICs) purposes, includes the costs connected with the car or van (such as insurance) which are regarded as part of the benefit-in-kind under normal rules; and
- adjusts the value of any capital contribution taken into account when a car is made available for only part of the tax year, so as to align the OPRA rules with the normal car benefit charge rules.

CIOT comments

1.2. We agree the amendment in respect of connected costs achieves its purpose in terms of bringing in costs connected to the car like insurance, road tax etc. in considering what has been sacrificed, i.e. it broadens the amount from simply the sacrifice in respect of the car itself.

1.3. This said, this represents a change from HMRC's current approach as contained in October 2017's Employer Bulletin in respect of P46(Car) completion which said:

'The P46 (Car) data you submit will have a new field 'cash foregone'. This is the cash foregone for the car only (excluding fuel, maintenance or any other attributable service). This should be completed whenever there is an OPRA'.

This change to calculating the 'total amount foregone' for 2019/20 onwards will therefore need extensive publicity given the differing advice for 2017/18 and 2018/19.

- 1.4. While we also agree that the change on capital contributions achieves its purpose we think it could be achieved more simply. At present, section 132A of the Income Tax (Earnings & Pensions) Act 2003 (ITEPA 2003) does not time apportion the deduction for any capital contribution. This clause addresses this point. However, the manner that capital contributions are dealt with is, in our opinion, unduly complicated.
- 1.5. If the rules simply compared the section 120(1) ITEPA 2003 'standard' car benefit charge with the 'relevant amount' under section 121A – i.e. making the comparison after any (time-apportioned) capital contributions have been deducted – and with the higher figure then being taxed, the same result could be achieved more simply.

2. **Clause 11: Beneficiaries of tax-exempt employer-provided pension benefits**

Overview

- 2.1. This clause updates an existing tax exemption, which provides for employer paid premiums into life assurance products and employer contributions to certain overseas pension schemes to be paid free of tax, by replacing the requirement for a beneficiary to be either the employee or a member of the employee's family or household with a requirement for the beneficiary to be any individual or registered charity.

CIOT comments

- 2.2. We believe the legislation included in the Finance Bill will achieve its aim of widening the scope of the exemption from spouse, civil partners, parents, children and dependents, domestic staff and the employee's guests, to allow any individual, or a charity, to be the beneficiary of the employee's death or retirement benefits. This allows the employee to nominate any individual or charity to be the beneficiary of any death benefits arising from the employee's death.

3. **Clause 81: Construction industry scheme and corporation tax etc (Security Deposits)**

Overview

- 3.1. This clause will provide HMRC with powers to make secondary legislation to require a person to provide a security (cash or a performance bond) for corporation tax liabilities and construction industry scheme deductions that are or may be due to HMRC. It also provides that failure to provide such a security when required will be a summary offence and that a person who has committed that offence will be subject to a fine, and makes a minor amendment to the existing PAYE security deposit regime to ensure consistency. The government intend to use this where they believe a taxpayer is a compliance risk due to a previous poor record and/or see a risk of a 'phoenix' scenario where a business is liquidated / put into administration to eliminate a tax debt and another business set up by the same person to replace it.

CIOT comments – Construction Industry Scheme

- 3.2. We believe the legislation enabling HMRC to introduce secondary legislation that will require a contractor within the scope of the Construction Industry Scheme (CIS) to provide a security deposit in appropriate circumstances will achieve its aim.
- 3.3. This said, we do think that before the required secondary legislation is introduced, independent research should be undertaken into HMRC's current approach to imposing security deposits in respect of PAYE and VAT, and the effect demands for a deposit have on struggling businesses. A key aspect to the security deposit regime must be to distinguish those who cannot pay from those who will not pay!
- 3.4. For example, while it would be right to require a security deposit from a business that appears to have been set up with the sole intention of not paying over to HMRC CIS deductions made from subcontractor payments, our members have reported that HMRC's use of security deposits can sometimes lead to otherwise viable businesses ceasing to trade. For example, cases where the regime is applied to smaller businesses which have got into financial difficulties and HMRC has, rather than working with the business to allow them to trade out of their problems and pay their taxes, taken a blunter approach and demanded a security deposit the business cannot pay. This then leads to insolvency, job losses and the Exchequer receiving less tax than it otherwise would have, which is counter-productive.
- 3.5. We suggest that to safeguard businesses that need help rather than applying 'the stick', the legislation should state that use of the security deposit regime must only be deployed where it is 'appropriate and proportionate' to do so.

4 The Chartered Institute of Taxation

- 4.1 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.

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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The Chartered Institute of Taxation

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