

Executive summary

This Bill broadly achieves its two objectives, which mirror changes already made to income tax. In a number of areas, however, the proposals appear to lack clarity or raise concerns about increased administrative burdens.

1. Overview

- 1.1. The Bill more closely aligns the NICs treatment of (a) termination awards and (b) income from sporting testimonials with the Income Tax treatment.
- 1.2. The Bill introduces a new 13.8% Class 1A Employer-only NICs charge to a termination award (over £30,000) taxable under section 403 ITEPA 2003 or a payment from a non-contractual sporting testimonial (over £100,000). This more-closely aligns the NICs treatment with the Income Tax treatment of termination payments and sporting testimonials, which were legislated for in Finance Acts in 2016 and 2017. The Class 1A NICs charge will take effect for payments made on or after 6 April 2020.

2. Comments on termination awards clauses

- 2.1. A termination award is a payment received in connection with the termination of a person's employment. The NICs Bill more closely aligns the NIC treatment of any termination award that is taxable under section 403 ITEPA 2003 with the income tax treatment of that award (where a £30,000 exemption applies). This Bill does not affect the NICs treatment of other types of termination award such as those which constitute earnings and are subject to PAYE and Class 1 (primary and secondary) NIC in full in any event.
- 2.2. The legislation effecting the introduction of the Class 1A NICs charge on the taxable element of a termination payment appears to achieve its objective.
- 2.3. We have a comment on the nature of the NICs charge. The government is introducing a Class 1A NICs charge on termination payments. Class 1A is only payable by employers but is usually payable only on non-cash benefits in kind. Paying Class 1A on 'cash earnings' (in this case a termination payment) is highly unusual (we can't find another example of Class 1A arising on cash earnings – excepting the new Sporting Testimonial liability). We understand that the reason why a Class 1A charge is being applied is because it is said that introducing a Class 1 secondary (employer) NICs-only charge that doesn't then result in a Class 1 primary (employee) NICs liability is considered harder to achieve. This said, this is of course precisely the situation when an earner reaches retirement age, so it is not unprecedented.
- 2.4. Also, we have concerns about the collection mechanism for this Class 1A liability. The [Tax Information and Impact Note](#) for this proposal (last updated April 2018) states:

This legislation does not set out the way that the Class 1A charge will be collected as this will be covered in secondary legislation in due course. It is anticipated that this Class 1A charge will arise and be paid in 'real-time', rather than after the end of the tax year, as with other Class 1A charges.

- 2.5. This is a break from normal practice and is likely to be confusing to employers and add to their administrative burdens. Normally Class 1A NICs are calculated annually from P11D entries. The total amount liable to Class 1A is recorded on form P11D(b) and payment is sent by the employer to HMRC by July 19th (22nd for electronic payments) after the end of the tax year.
- 2.6. Payment in 'real time' would require additional boxes on the PAYE RTI (real time information) submission to record the Class 1A liability and a new allocation process by HMRC for the monthly or weekly 'PAYE deductions' payment from employers (employers make a single payment to HMRC to cover income tax, Class 1 primary and secondary, student loan deductions, etc which HMRC then allocates, between the different 'taxes' in respect of each employee).
- 2.7. We think that the Government should reconsider their approach on collection of the Class 1A charge. The administrative implications of requiring the Class 1A liability on termination payments to be paid in real time, rather than annually when Class 1A is payable on non-cash benefits in kind, are substantial. In our view it would be preferable to collect the charge after the end of the tax year, as with other Class 1A charges.
- 2.8. We are also concerned that this change in collection process for Class 1A – if it goes ahead – could herald a change in process for paying Class 1A on benefits in kind more generally. In particular, where such benefits are payrolled by employers and taxed (for income tax) in real time on a weekly or monthly basis. In particular, we think the government should clarify whether it has plans to change the payment process of Class 1A NICs on payrolled benefits in kind.

3. Comments on sporting testimonials clauses

- 3.1. Sporting testimonials arise where a club or its supporters / fans organise a sporting event / series of related events to honour a player for their service to that club / sport. Sporting testimonials to which a player has a contractual or customary right are usually organised by the player's club and payments to the player from such testimonials are in any event treated as earnings, and are subject to income tax and NICs in full. Non-contractual testimonials are usually arranged by an independent testimonial committee on behalf of the player / supporters and, usually, with the permission of the club.
- 3.2. Under the income tax rules introduced in Finance Act 2016 the first £100,000 of income from non-contractual sporting testimonials is exempt from income tax. The intention is that the NICs rules will replicate this exemption and only impose Class 1A NICs on the amount chargeable to income tax.
- 3.3. We have reviewed the NICs Bill and it charges to Class 1A the amount that is 'general earnings'. We assume this means the amount above £100,000 (or any amount from a second or subsequent testimonial as you are only allowed one in your lifetime) but it is

not clear. The termination payments legislation in this Bill refers specifically to the amount chargeable under the Income Tax (Earnings & Pensions) Act 2003. It is surprising that the same approach has not been adopted here.

- 3.4. In particular, we note that ITEPA 2003, section 226E(7) treats a non-contractual sporting testimonial payment as earnings for income tax purposes and section 306B(2)(5) then provides a limited exemption to this payment such that no liability to income tax arises on the first £100,000. We think, therefore, that since it is not clear that 'general earnings' means the amount, if any, chargeable to income tax it would be helpful if the government could confirm that only the amount of a sporting testimonial payment that is liable to income tax under PAYE will be liable to Class 1A.
- 3.5. The Bill makes the 'controller' of the sporting testimonial (usually an independent committee) liable to account for the Class 1A where the employer is not organising the testimonial (if the employer organises the testimonial the income is all liable to tax and Class 1 NICs as earnings), which we agree is the right approach to take. It is not clear if the controller will be required to account for the Class 1A in real time but if so our comments in relation to termination payments as regards the timing of accounting for and paying Class 1A NICs (see 2.7 above) apply equally here.
- 3.6. One point worth noting is that the income from non-contractual sporting testimonials comes from 'fans' of the recipient of the payment and is a voluntary payment. Compare the position of tips where if a customer gives a cash tip directly to the employee and the employee keeps it without the involvement of the employer, the tip is not liable to NICs. Fans making donations to sporting testimonials might be surprised – and regard it as, in this context, inconsistent – to learn that an employers' Class 1A liability arises on their donation. We are aware that this point has been advanced before and that the comparison is not accepted by government in so far as the sporting testimonial will be arranged by a formally constituted testimonial committee (or equivalent). Nevertheless we think the rationale for imposing Class 1A NICs on what are still effectively voluntary donations by supporters (i.e. a 'tip') warrants further explanation.
- 3.7. We also think some clarification is required as to the meaning of 'customary' / 'non-customary'. Albeit section 226E, and the corresponding £100,000 exemption in section 306B, cover sporting testimonial payments which do not otherwise constitute earnings, and the reference to customary etc. is included in HMRC's guidance and not the legislation. In any event in many cases a player has a contractual right to a sporting testimonial included in their contract of employment, and understandably payments from such testimonials are liable to income tax and NICs as earnings. In other cases there may be an 'expectation' that a club will agree to a testimonial if a player has been with them for many years. We think such a 'practice' of agreeing to a testimonial in certain situations will cause uncertainty as to whether a testimonial is contractual or non-contractual. In particular, it would be helpful if HMRC would elaborate on the factors it will look at to determine whether something is 'normal practice' / 'customary' and provide some examples.
- 3.8. During the second reading the Financial Secretary advised:

“If someone is involved in a sports club of some sort, and there is a testimonial every year for a particular player or group of players, and that had been going on for some time, that would be a customary testimonial situation.”

- 3.9. This would seem to imply that ‘customary’ refers to an expectation that the particular employer will provide a testimonial, based on that employer’s past practice, rather than it being customary in a particular sport for testimonials to be granted. While we think this is helpful, we think some parameters need to be put around this for determining whether or not a practice has become customary. For example, if a sports club has a long established practice of granting a testimonial to any player that has been at that club for, say, 10 years we would agree that that practice has become customary. But what if that club then grants a testimonial to a player who, say, has been at the club for 8 years but whose career is cut short by injury. Is that caught as a ‘customary’ testimonial because the club has a customary practice of granting testimonials or is it a ‘non-customary’ testimonial as the circumstances giving rise to the testimonial are different from the club’s ‘usual’ practice?
- 3.10. We raised this point during the passage of Finance Act 2016 (where the income tax changes that these clauses mirror were introduced) and assurances were provided that it would be covered in the guidance, but it has not been resolved.

Finance Bill 2016 exchange

Labour spokesman (Rob Marris):

According to the Chartered Institute of Taxation—and I thank the institute for its help—the arrangement whereby the £100,000 on which, as the Government have clarified, tax is not payable if it is income from a testimonial obtains when the testimonial is neither contractual nor customary. For those of us who are lawyers, like the Financial Secretary, “contractual” is a fairly straightforward term, but “customary” is a bit woolly. It is the kind of word that lawyers and accountants like, because they can make a living charging people for interpreting it so that they can plan their affairs. Again, I may be wrong, but I cannot see a definition of “customary” in the Bill, and I urge the Financial Secretary to have another look at that. ...

The Minister (David Gauke):

Turning to sporting testimonials, a point was raised about the definition of “customary”. To reassure the hon. Member for Wolverhampton South West, I point out that HMRC is committed to working with external bodies in the production of guidance on this, which will cover issues such as the definition of “customary”. ...

What the [guidance](#) says:

If it’s normal practice for a sportsperson to be awarded a testimonial in certain circumstances, this is what we refer to as ‘customary’. It doesn’t matter whether the testimonial is organised by the employer or by a third party.

A non-contractual testimonial will be where there isn’t a contractual arrangement between the employer and the sportsperson.

A non-customary testimonial will be where there isn’t a contractual arrangement or a testimonial award which is considered to be normal practice.

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.
- 4.2. 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.
- 4.3. The CIOT’s 18,700 members have the practising title of ‘Chartered Tax Adviser’ and the designatory letters ‘CTA’, to represent the leading tax qualification.

The Chartered Institute of Taxation

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