Written evidence submitted by the Chartered Institute of Taxation (FB07)

Finance Bill 2020 – Submission to Public Bill Committee

Clauses 7-21
Employment Taxes

Executive Summary

Clauses 7-9 leave the rules for calculating the company car benefit-in-kind tax charges even more complex

Clauses 10-12 relate to tax treatment of some bursaries and social security benefits – uncontroversial so far as we can see

Clause 13 puts tax treatment of unpaid office-holders' expenses on a statutory footing – welcome, but the legislation should be broader to ensure it covers travel from home to the place the work is undertaken

Clauses 14-20 implement changes to the Loan Charge – while broadly supportive we have concerns over (a) deadlines in the light of COVID-19, (b) treatment of those who have repaid loans, (c) appeal rights, (d) lack of clarity in some areas

Clause 21 increases the amount someone can earn without their annual allowance for tax relief on pension contributions being reduced – the government should consider (a) backdating this to apply to 2019-20, (b) a broader review of how tax relief applies to pension saving; as well as this measure to fix a flaw affecting high earners we want to see action on the 'net pay anomaly' which disadvantages many low earners

The CIOT has also called for legislation to protect employees who give up salary and bonuses that they have earned the contractual right to, in order to help the businesses that employ them survive in the COVID-19 crisis, from being taxed on these amounts just as if they had taken them

Employment income (Clauses 7 to 13)

Clauses 7, 8 & 9 – Taxable benefits: cars – rules for measuring carbon dioxide emissions

Overview

These three clauses introduce a new regime for calculating a car's CO_2 emissions (known as the Worldwide Harmonised Light Vehicles Test Procedure (WLTP)) for company car tax (CCT) purposes, which will apply to all cars first registered from 6 April 2020.

CIOT comments

We think that the legislation achieves its objective, albeit that the rules for calculating the company car benefit-in-kind tax charge are now very complex. In particular, with reference to:

(a) WLTP emissions testing for cars registered from 6 April 2020 (with the percentage on which the benefit is calculated based on both emissions and electric range and varying from 0% (for zero emissions cars) to 37%);

(b) New European Driving Cycle (NEDC) emissions testing for cars registered between 1 October 1999 and 5 April 2020 (with the percentage here also being based on emissions and electric range but being slightly different to that which applies to cars registered from 6 April 2020, at least for the 2020/21 and 2021/22 tax years - and with special rules for bi-fuel cars registered from 1 January 2000;

(c) Separate rules for cars registered between 1 January 1998 and 30 September 1999 (which depend on whether the car has a CO2 emissions figure); and

(d) Other separate rules for cars registered prior to 1 January 1998.

Clause 10 – Apprenticeship bursaries paid to persons leaving local authority care

Overview

This clause provides an income tax exemption for one-off bursaries (the care leaver's apprenticeship bursary payment) paid to individuals in or leaving local authority care and joining an apprenticeship scheme. A similar disregard for National Insurance Contributions (NIC) purposes will be laid in regulations in due course.

CIOT comments

We think that the legislation achieves its objective.

There is an existing exemption at Section 776 (scholarship income) of the Income Tax (Trading and Other Income) Act 2005 for income from scholarships, which includes bursaries, held by an individual in full-time education. We think Section 776 could have been amended to include this bursary payment instead of introducing a new section into the Income Tax (Earnings and Pensions) Act 2003.

The reason the Government have not done this is because their opinion is that this bursary is employment income, rather than 'other income'. This is despite other bursaries being classed as 'other income'. The reasoning for this is not clear. It would be helpful to understand why the Government considers this bursary to be employment income. If it is employment income then NICs disregard legislation will be required to exempt the payment from NICs (both employee and employer). If not, this additional legislation may not be needed. In our view there is no obvious reason why it would be as there is not a direct connection between the authority paying the bursary (the Education and Skills Funding Agency) and the employer providing the apprenticeship. Getting clarity as to why this is regarded as employment income may help us understand how any other new bursaries will be viewed for tax purposes and, in particular, when those paying such bursaries are liable to account for tax and NICs under the PAYE system.

Clause 11 – Tax treatment of certain Scottish social security benefits

Overview

This clause provides an income tax exemption for three new social security benefits being paid by the Scottish Government: Disability Assistance for Children and Young People; Job Start; and the Scottish Child Payment.

CIOT comments

We think that the legislation achieves its objective.

Clause 12 – Power to exempt social security benefits from income tax.

Overview

This clause provides the Treasury with the power to lay regulations to exempt from income tax UK or devolved administration social security benefits. This means future measures like those in Clause 11 can be done through secondary, rather than requiring primary, legislation.

CIOT comments

We think that the legislation achieves its objective, albeit we are surprised that there is not already a general power permitting the Treasury to lay this type of regulation.

Clause 13 – Voluntary office-holders: payments in respect of expenses

Overview

This clause replaces the existing concessionary treatment of payments or reimbursements of reasonable out-of-pocket expenses to voluntary office holders contained in HMRC guidance at EIM71100[1] with effect from 6 April 2020.

CIOT comments

We welcome this measure which will put the income tax treatment of voluntary office-holders' expenses on a statutory footing rather than relying on the current concessionary basis.

The current concession refers to extra costs incurred in undertaking the voluntary work. Accordingly, private expenses such as the cost of travel between home and the place where the work is done are exempt from tax.

The new legislation refers to reimbursement of expenses "*in carrying out the duties of [the] employment*". Since travel from home to work only puts one in a place to carry out the duties of the office rather than actually arising 'in carrying out' those duties, we are not certain that the legislation achieves its purpose.

While we understand that the intention of the legislation is to exempt small amounts of travel and subsistence payments as well as expenses such as additional childcare costs, we think this should be put beyond doubt by amending Section 299B(1) from *"…reasonable expenses incurred in carrying*

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[1] https://www.gov.uk/hmrc-internal-manuals/employment-income-manual/eim71100

out the duties of that office" to read *"…reasonable expenses incurred in (i) carrying out the duties of that office, or (ii) enabling a person to undertake the duties of that office*".

There is no definition of a voluntary office holder in the new draft legislation. We understand this is intentional, as the legislation relies on definitions in current legislation, for example, Section 299A(2)(1) of ITEPA 2003. We further understand that the term 'voluntary office holder' includes a person who has been appointed to a position by a charity organisation and does voluntary unpaid work for them as an office holder and that unpaid trustees of organisations are regarded as being placed in a similar position as such volunteers and can claim reasonable out-of-pocket expenses as well. We would welcome this being confirmed in guidance.

Loan charge (Clauses 14 – 20 & Schedule 1)

Overview

These 7 clauses and Schedule make the legislative changes necessary to implement the government's response[2] to the review of the disguised remuneration loan charge undertaken by Sir Amyas Morse.

CIOT general comments

(i) We think that the 30 September 2020 deadline for making an election to spread the loan charge (Clause 15) and submitting the 2019 self-assessment (SA) return / relieving the taxpayer from a charge to interest (Clause 17) should be amended. Instead we consider that an extended deadline of 31 January 2021 (the 'normal' deadline for amending 2019 SA tax returns) should apply. We think that some taxpayers will require additional time to obtain evidence of, for example, the loan charge reduction where the underlying liability had been previously disclosed (Clause 16). This is because in some cases the records and documents that taxpayers need access to are not currently available due to the response to COVID-19. For example, with businesses in lockdown it is not possible to access the offices etc where the required records are kept.

(ii) We note that taxpayers are treated differently as a result of the changes to the loan charge depending on whether they have 'done nothing', voluntarily settled or repaid a loan. In light of this we think it is important that it be explained as to why these groups are treated differently. In particular:

- Taxpayers that have done nothing may appear to be in a better position as a result of the loan charge changes, as they now have until 30 September 2020 to submit their return, omitting years that are now outside the scope of the loan charge, and can pay the tax due (or agree time to pay etc) interest free.
- Taxpayers that have agreed voluntary settlements between 16 March 2016 and 10 March 2020 will be able to obtain refunds for years now outside of the loan charge but will have to wait until the Finance Bill gets Royal Assent at the earliest to get these refunds.
- Taxpayers that have followed HMRC's advice to avoid paying the loan charge and voluntarily repaid their loans, or were required by their employer to repay the loan, appear to be disadvantaged as it seems that they will not be able to have their loan repayments for years that now drop out of the loan charge refunded to them without incurring a tax charge under the disguised remuneration legislation.

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2 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/854490/20191219_Government_response.pdf

(iii) We would welcome clarification of the position where an employer (or other party) has paid tax under PAYE in respect of the loan charge for years which are now outside the scope of the loan charge. Such PAYE payments do not appear to fall within scope of the voluntary restitution scheme as they do not arise from a voluntary settlement. In particular, will employers be able to reclaim the PAYE (and NICs) paid through the PAYE Scheme on the basis that there was an error or mistake in the RTI return?

(iv) We think that where an application for a refund or waiver of tax paid or due under the scheme provided for in Clauses 19 and 20 is refused there should be a right of appeal to the Tax Tribunals (rather than solely, as proposed, a right to ask HMRC to review their decision).

(v) We would also welcome clarification of the position where a taxpayer has paid, or will pay, the loan charge but is subsequently pursued for repayment of the loan. In particular, if a recent report in Computer Weekly[3] is correct, then a number of taxpayers will be faced with not just paying the loan charge but also the prospect of having to repay some or all of the loans received – and with no corresponding reduction in their tax liability.

Clause 14 – Loan Charge not to apply to loans or quasi-loans made before 9 December 2010

Overview

This clause removes loans made before 9 December 2010 that would have been subject to the April 2019 loan charge from that charge to income tax.

CIOT comments

We think that the legislation achieves its objective

Clause 15 – Election for loan charge to be split over three tax years

Overview

This clause allows taxpayers subject to the loan charge to spread the charge evenly over three tax years (2018/19, 2019/20 and 2020/21) so that the tax payable is similarly spread. In some cases this will also lower the rate at which tax is charged.

CIOT comments

While we think that the legislation achieves its objective, we also think that it should be possible to revoke an election to spread the loan charge (Clause 15(3), paragraph 1A(9)). At the very least, we think taxpayers should be able to amend their election up until 30 September 2020 (or such later date as is agreed for submission of the 2019 SA return) by way of submission of an amended return.

As noted above, we think that the deadline for making an election should be extended from 30 September 2020 to 31 January 2021.

Clause 16 – Loan charge reduced where underlying liability disclosed but unenforceable

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[3] https://www.computerweekly.com/news/252481425/Loan-charge-contractors-face-double-whammy-of-life-changing-repayment-demands-as-past-loans-recalled

Overview

This clause removes loans made on or after 10 December 2010 and prior to 6 April 2016 where a reasonable disclosure of the loan was made and HMRC had not taken any steps to protect their position prior to 6 April 2019.

CIOT comments

We think it is crucial that HMRC adopt a practical approach to interpreting what is 'a reasonable disclosure' (Clause 16(1) paragraphs 1B(1) and (5) and Clause 16(2) paragraphs 1A(1) and (5)). For example, in some cases a taxpayer will not have had to file an SA tax return for a tax year but their employer or their business will have disclosed the loans etc in a return of their own, in which case we consider that this should be considered as an adequate disclosure by the taxpayer. In this regard, the amendments to paragraphs 1B(1)(b) and (c) and 1B(7) (meaning of "qualifying tax return") of Schedule 11 to F(No.2)A 2017 included in the Finance Bill legislation, as compared to the original draft legislation, appears to permit disclosures in tax returns other than the taxpayer's to be taken into account. However, we would welcome confirmation that this is indeed the case.

Clause 17 – Relief from interest on tax payable by a person subject to the loan charge

Overview

This clause provides that no interest will be applied to any tax due for 2018/19 and for 2019/20 payments on account so long as the 2019 SA return is submitted by 30 September 2020 and the tax due is paid by then (or an arrangement to pay has been agreed). This covers all tax due and not just the tax due on the loan charge. If you do not pay (or agree an arrangement) by 30 September, then interest is charged from the normal due date.

CIOT comments

We think that that this legislation achieves its objective. However, as noted above we also think that the deadline for filing the 2019 SA return should be extended to 31 January 2021.

We assume that corresponding changes will be made for interest due on any NICs payable.

Clause 18: Minor amendments relating to the loan charge

We have no comments on this clause

Clause 19 – Repaying sums paid to HMRC under agreements relating to certain loans etc

Overview

This clause enables HMRC to establish a scheme under which sums paid, or due to be paid, in settlement of a loan charge etc for years now not subject to the loan charge (i.e. loans made prior to 9 December 2010 and between 9 December 2010 to 5 April 2016 where reasonable disclosure had been made) may be repaid, or waived. This is provided that the settlement agreement was made between 16 March 2016 and 19 March 2020. Applications for repayment etc must be made by 30 September 2021.

CIOT comments

This clause and clause 20 legislate for a proposed 'disguised remuneration repayment scheme 2020' in broad terms only. The clauses provide HMRC with considerable discretion as to how to operate the scheme. For example, whilst there is a right to a review of a 'repayment decision' refusing repayment, this is only by way of representations to HMRC within 2 months of the decision. There is no independent review process, e.g. via the First Tier Tribunal ('FTT'). While it is understandable that a degree of latitude is provided for on the mechanics of the operation of the scheme, we think there should be appropriate rights of appeal to the FTT.

Clauses 19(4) and (5) require reasonable disclosure of the loan etc to be made in a return. We think that information provided to HMRC outside of the tax return process should also be taken into account and suggest that the wording in Clause 19(4) be amended from:
'… a tax return, or two or more tax returns taken together, contained a reasonable disclosure of the loan or quasi-loan'.
to:
'a reasonable disclosure of the loan or quasi-loan was made to HMRC for a qualifying year'.

Clause 20 – Operation of the scheme

Overview

This clause makes further provisions in respect of the scheme that HMRC may establish under Clause 19.

CIOT comments

Clauses 20(5)(a) and (b) refer to '*any other person*'. This authorises HMRC to make a repayment conditional on 'the applicant and any other person' agreeing to the termination or variation of a qualifying agreement or making a new agreement. We would welcome clarification as to whom 'any other person' might be? We would expect the parties to the original settlement to have to agree any termination etc. of that agreement, but query who else is contemplated here.

Clause 20(6)(a) allows the repayment scheme to make provision for the effect a settlement agreement has had on an applicant or any other person. And Clause 20(7) allows provision to be made to ignore a repayment for the purposes of whether a person is subject to any other liability.

We understand that, typically, more recent settlement agreements included a provision for the writing-off or waiving or a loan as part of the settlement agreement with HMRC. Our assumption is that this means that a loan write-off etc arising from, or in relation to, the settlement agreement will not cause a tax charge to be triggered where a repayment is made in respect of a tax year now dropping out of the loan charge. However, we would welcome confirmation on this point. It should be noted that, if this is correct, those concerned will not have paid income tax on the making of the original loan, under the loan charge or on the subsequent waiving of the loan and so will indeed be fortunate relative to other individuals in different circumstances. (This said, the question of inheritance tax (IHT) on any waiving of a loan, and who may be responsible for this, is a separate matter.)

It should also be noted that we understand that post-11 March 2020 settlement proposals, including those that HMRC deferred whilst the independent review was conducted, do not include a provision for the writing-off or waiving of any part of a loan that falls within a qualifying year (i.e. pre-9

December 2010 loans and loans made since then but before 6 April 2016 where a reasonable disclosure has been made). Instead, it would seem a Part 7A, ITEPA 2003 tax charge will arise as and when, or if, the loan is waived etc. If this is correct, these individuals would seem to be rather less fortunate!

Pensions (Clause 21)

Clause 21 – Annual allowance: tapered reduction

Overview

This clause increases the level of the 'adjusted income' at which the tapered reduction of an individual's pensions annual allowance (currently £40,000) begins from £150,000 to £240,000. It also increases the 'threshold income' - the income level at which an individual needs to consider whether their adjusted income exceeds £240,000 - from £110,000 (being £150,000 minus the £40,000 annual allowance) to £200,000 (being the new £240,000 threshold less the annual allowance). In addition, it provides for the minimum annual allowance, after applying the taper reduction, to fall from £10,000 to £4,000. These amendments apply from 6 April 2020.

CIOT comments

While we consider that these amendments achieve their stated purpose, as noted they only take effect from 6 April 2020. This means that the adverse effects of the lower thresholds - for example in triggering annual allowance charges on NHS clinicians - remain for the 2019/20 tax year. In particular, they will still potentially impact clinicians working extra hours in response to COVID-19 in March 2020 if they are paid before 6 April 2020. While the NHS has committed to compensate clinicians for resulting annual allowance charges arising in 2019/20 (on their retirement given that they can elect for the pension scheme to bear the charge in the meantime), we would suggest consideration be given to backdating this measure to 6 April 2019. Some measures in this Bill (which seek to protect the exchequer rather than bring a cost to it) are imposed retrospectively (see our comments on clauses 100-101.)

Furthermore, the amendments, whilst welcome, do not remove the difficulties that arise where an individual unexpectedly exceeds the relevant income thresholds and so triggers an annual allowance charge. They simply mean that this is likely to arise in fewer circumstances, something that has been achieved at a significant cost to the Exchequer and to the benefit of many higher-earning people besides NHS clinicians. We consider that a review of how tax relief presently applies to pension saving, with regard to both the annual and lifetime allowances, should be undertaken to revisit whether there is a better way of determining how pension relief should be structured.

Another pension tax relief issue

The 2019 Conservative Party general election manifesto promised action on two flaws in the current pension tax relief framework – one affecting higher earners (this one) and one affecting lower earners, which has not yet been addressed, although it was announced in the Budget that a Call for Evidence would be published.

Briefly the issue is that because of a flaw in the tax system around 1.7 million low-income workers (mostly women) are being unfairly charged 25 per cent more for their pension contributions as a result of the way their employer pension scheme operates. The CIOT's Low Incomes Tax Reform

Group (LITRG) is part of the Net Pay Action Group, a group of leading pensions and tax experts that have been campaigning for this to be rectified. LITRG's 2020 Budget Representation[4] on behalf of the Net Pay Action Group set out a proposed solution of a system that allows HMRC to identify which savers, earning below the income tax threshold, have contributed to a net-pay scheme and therefore effectively been charged more than similar savers contributing under a relief at source scheme. HMRC could then provide that government incentive, worth 25% of each low-paid worker's pension contribution, through an existing process.

The government announced at Budget 2020 that they would be launching a call for evidence on this issue. We look forward to this. We hope that in the meantime members of the committee will take this opportunity to highlight the need to help low earners disadvantaged by the current pension tax framework as well as high earners, and that ministers will take the opportunity to provide reassurance that, once the COVID-19 crisis has receded, they will deliver on their manifesto commitment to address this injustice.

Further proposed change

Legislation should be introduced to protect some employees and directors who waive their salary and bonuses to help the businesses who employ them survive in the COVID-19 crisis from being taxed on those amounts as if they had gone on to receive them. This can happen because under current law the amounts become taxable once there is a contractual right to them, even if they are never actually received.

We would also welcome clarification of the tax treatment of a voluntary (rather than contractual) repayment of earnings received by an employee (including directors) to an employer and whether this can constitute 'negative earnings' for tax purposes. We are aware that a number of directors would like to repay bonuses already received in order to help keep a business afloat and avoid redundancies amongst employees. Where this is the case, they would want the bonus repaid to be treated as negative earnings and any tax / NIC paid to be recoverable, but the current rules appear not to allow this. If this is the case, we would like to see the interpretation of the provisions on negative earnings relaxed so that bonus repayments due to COVID-19 can qualify as negative earnings.

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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[4] https://www.litrg.org.uk/latest-news/submissions/200204-budget-representation-2020-net-pay-action-group

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June 2020