Employment income: Clauses 7 to 11 and Clause 81

Employment Tax

01 January 2019

The CIOT has submitted representations to Parliament on the employment income clauses contained in the Finance Bill: while the legislation largely achieves its aims there were points requiring clarification.

Clauses 8, 9 and 10 were debated by the Committee of the Whole House. A Committee of the Whole House is sometimes used instead of a Public Bill Committee for some or all of a Bill's committee stage in the Commons. It takes place in the main chamber and allows all MPs to take part in the debate and to vote on those parts of the Finance Bill's contents which are discussed.

Clause 8: Exemption for benefit in form of vehicle-battery charging at workplace

This clause introduces a new exemption (backdated to 6 April 2018) to remove any benefit-in-kind charge on electricity employers provide, at or near the employee's workplace, to charge employees' electric vehicles. The CIOT had previously commented on HMRC's draft guidance and the draft Finance Bill legislation which was published in July 2018.

In our representations we recommended the exemption be widened to include any circumstance where an employer provides electricity to charge an employee's own electric vehicle, rather than limiting it to charging at or near the workplace.

We also raised a concern about the interpretation of the requirement that charging facilities must be available to all the employer's employees at that workplace generally and requested clarification of whether this requirement would fail if, for example, there are an insufficient number of charging points to meet demand.

Clause 9: Exemptions relating to emergency vehicles

This clause makes three changes to the existing tax exemption for emergency vehicles contained in ITEPA 2003 s 248A to (a) extend the current 'on-call' exemption to allow for ordinary commuting in an emergency vehicle when not on-call, (b) provide that fuel is to be ignored as an 'additional expense' in working out the tax charge if certain conditions are met, and (c) introduce transitional arrangements for the taxation of emergency vehicles for the period from 6 April 2017 to 5 April 2020, to avoid an immediate significant increase to the tax charge for having an emergency vehicle available for private use following changes to the 'use of assets' legislation.

The CIOT had previously commented on the draft legislation and queried whether a tax charge could arise under ITEPA 2003 Part 3 Chapter 6 instead of Chapter 10 in respect of a non-exempt emergency vehicle. In response. HMRC confirmed that they had considered this but, because of existing case law in this area, were satisfied that Chapter 6 would not apply to emergency vehicles.

In our representations we requested clarification of the government's policy on employer paid for fuel where the terms of the exemption are not met. In such cases the legislation appears to require commuting miles to be included within the calculation of private miles in arriving at the associated benefit-in-kind charge, with the result being an appreciably higher tax charge.

Clause 10: Exemption for expenses related to travel

This clause (a) removes the requirement for employers to check receipts for amounts spent by employees when using the HMRC benchmark scale rates to pay or reimburse their employees' qualifying subsistence expenses, and (b) makes amendments to existing legislation to allow HMRC to introduce a statutory exemption for overseas scale rates.

While the legislation is welcome, in our response to the 2017 consultation on employee expenses we also suggested a review of the benchmark scale rates and flat-rate tax-free allowances, and it is disappointing that the government is not reviewing the amounts to ensure they remain relevant and reflective of current costs.

The other employment income clauses were included for debate as part of the Public Bill Committee sessions.

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

This clause addressed two mistakes in the Optional Remuneration Arrangements (OPRA) rules by introducing amending legislation to (a) ensure that when a taxable car or van is provided through OPRA, the amount foregone 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 (b) adjust 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.

While the amendments bring in connected costs in considering what has been sacrificed, members should note this represents a change from the approach to calculating the ‘total amount foregone’ advised in HMRC’s October 2017 Employer Bulletin in respect of P46(Car) completion.

The change on capital contributions now correctly time apportions the deduction for any capital contribution. But the same result could have been achieved more simply by comparing the ITEPA 2003 s 120(1) ‘standard’ car benefit charge with the ‘relevant amount’ under s 121A, with the higher figure being taxed.

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

This clause concerns 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. It changes the requirement for a beneficiary to be either the employee or a member of the employee’s family or household so that the beneficiary can now be any individual or registered charity.

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

The clause provides HMRC with powers to make secondary legislation to require a person to provide a security for corporation tax liabilities and CIS deductions that are

or may be due to HMRC.

In our representations we recommended that, before secondary legislation is introduced, independent research 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 legitimate businesses, to ensure that the security deposit regime is only deployed where it is appropriate and proportionate to do so.

Our briefings can be viewed on the CIOT website.