Termination awards and sporting testimonials: Class 1A NICs

Employment Tax

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New regulations will require Class 1A NICs to be payable in real time from 6 April 2020 on termination awards and sporting testimonials.

The CIOT has commented on draft regulations that will require employers and testimonial committees to report and pay Class 1A NICs on termination awards and sporting testimonials in real time from 6 April 2020. The draft regulations provide for:

> (a) Class 1A NICs to be payable for a tax year in real time on a termination award that counts as employment income and is chargeable to income tax by virtue of ITEPA 2003 s 403, but is not earnings upon which Class 1 NICs arises; and
> (b) Class 1A NICs to be payable for a tax year in real time in respect of general earnings received by an earner which consists of a sporting testimonial payment that is paid to the earner by the controller of a sporting testimonial committee.

Termination awards

While Class 1A NICs is payable in real time on termination award 'cash payments', the draft legislation provides that where a benefit in kind is provided as part of a termination award and there is no transfer of ownership of the asset, the Class 1A due on that benefit will be payable after the end of the tax year. However, what is not clear is when the Class 1A NICs is due on a benefit where there is a transfer of ownership. We have asked for this to be clarified.

As there are no transitional provisions for termination awards, it would seem that the intention is that a Class 1A NICs charge will apply to any termination payment received on or after 6 April 2020, including payments in respect of terminations that

have already arisen! We have asked for this point to be clarified but, as it stands, employers, and their advisers, with pre-existing obligations in relation to terminations where payments will be made on or after 6 April 2020 need to be aware that they will have a Class 1A NICs liability.

Sporting testimonials

We noted that the draft legislation does not appear to limit the Class 1A NICs charge to the amount received in excess of the £100,000 income tax exemption.

The NICs (Termination Awards and Sporting Testimonials) Act 2019 s 3, which amends the Social Security Contributions and Benefits Act 1992 ss 10 and 10ZA and inserts new s10ZBA into that Act, provides for:

'Class 1A NICs to be payable for a tax year in respect of general earnings received by an earner (Sportsperson) which consist of a sporting testimonial payment that is paid to the earner by the controller of a sporting testimonial committee.'

While the equivalent income tax legislation includes a £100,000 limited exemption for sporting testimonial payments (as ITEPA 2003 s 306B exempts the first £100,000 of 'earnings' arising under s 226E from income tax), it seems that this has not been carried over into the NICs Act or draft regulations. We have, therefore, queried whether this is a mistake.

Lastly, the draft regulations also allow for the existing NICs exemption from liability to continue for sporting testimonials announced before 6 April 2020. We have, however, asked HMRC to clarify the meaning of 'announced'. For example, is it enough for the recipient to be aware of the testimonial or does it need to be made public?

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