Freeports national insurance contributions exemption

Employment Tax

28 March 2022

The CIOT has responded to a technical consultation on draft regulations relating to the freeports zero rate of secondary Class 1 national insurance contributions, which will relax the working time requirement for certain freeport site employees.

The National Insurance Contributions Act 2022 introduces a new zero rate of secondary Class 1 national insurance contributions (NICs) for employers taking on new employees to work in a freeport site. Employers will be able to claim relief on the earnings of eligible employees up to £25,000 per year, for three years. The zero rate will apply from April 2022.

To qualify for the relief an eligible employer must take on the new employee at some point between 6 April 2022 and 5 April 2026. Note that employers will not be eligible to claim relief for a new employee if that person had either worked for them, or had been 'connected' with them, up to two years before the start of their engagement. The 'qualifying period' then starts either when the employee starts work or sees 'a substantial change' in their 'working arrangements'. The 'qualifying period' ends when either the employment ends, or if there is a substantial change in the employee's working arrangements. Employers are required to make an assessment at the start of the employment and maintain that assessment until there is a substantial change of circumstances in the earner's working arrangements, at which point an employer must reassess qualification for the relief.

At the start of the 'qualifying period', the employer must have a 'reasonable expectation' that 60% of the employee's working time over the 'qualifying period' will be at a single freeport site, where the employer must have business premises. Employment ceases to qualify for relief should the employer's expectation that the 60% test is met '*ceases to be reasonable in any given tax week*'.

This 60% test is being relaxed in certain situations. Draft secondary regulations provide for relaxations in the 60% test where the employer makes an adjustment to their employee's working pattern to accommodate the following protected characteristics: disability, pregnancy and maternity.

In our response, while we considered that the draft regulations would achieve their aim, we suggested that the proposed 'period of maternity' under which working pattern adjustments will not cause the 60% test to fail should be extended from 26 weeks to 52 weeks. We also queried why the relaxation of the working time requirement did not extend to include employees that work during a period of 'adoption leave'. Similar reasoning in respect of employees that have recently adopted a child would seem to apply as that which is proposed to apply to mothers in post-birth periods of maternity.

We also suggested that HMRC clarify in guidance the meaning of 'reasonable expectation' in respect of the 60% test and when the assessment of reasonable expectation should take place. It appears to us that the legislation means that so long as an employer had a 'reasonable expectation' at the start of an employee's employment that they would spend 60% or more of their time at a single freeport site, or would do so but for an adjustment to their working conditions due to disability, that employee will be a qualifying freeports employee, even if once the employment is underway their actual working time does not match the expected working time (assuming no substantial change in working arrangements).

The full response can be found here: www.tax.org.uk/ref930.