Draft FB 2023: low earners anomaly and pensions relief relating to net pay arrangements

Employment Tax | Personal tax

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The CIOT and LITRG have commented on draft legislation to address the 'low earners anomaly' for pensions relief relating to net pay arrangements.

The government has proposed a scheme of 'top-up payments' to be made to those earning around or below the personal allowance who do not receive tax relief on pension contributions to net pay arrangement schemes (as compared to non-taxpayers contributing to relief at source arrangements who do get tax relief). The draft legislation published for comment prior to inclusion in the Finance Bill (tinyurl.com/y63frj8f) appears to be broadly reasonable, but the proposal to treat the top-up payments as if they are employed earnings for income tax purposes does give rise to various concerns.

For example, where net pay pension savers have total income above their personal allowances, but receive a top-up payment based upon HMRC's calculation under the draft legislation using employed earnings alone, it appears that these people may be better off than their relief at source contributing counterparts. We were also concerned that deeming the payment as UK employment income raises issues with certainty. (An individual should be able to determine their taxable income when the tax year ends.) It could also give rise to potential international issues where an individual is entitled to an international enhancement to their lifetime allowance for pension contributions. Hence, we think it would be more appropriate to treat the top-up payment as either a tax nothing or a tax refund (the latter being the way LITRG originally proposed that such a scheme should operate).

Both responses also raised concerns about the practicalities of making the payments. The legislation states that HMRC must ‘so far as reasonably practicable’ make the necessary payments to affected individuals. While it is welcome that the onus of making the payments is largely placed on HMRC rather than individuals having to claim, our concern is that this phrase is perhaps open to interpretation. Pension savers could be left without redress if, for example, they are not easily contactable or perhaps mistakenly ignore HMRC communications due to a suspicion that they are a scam. We therefore recommended that an ability to claim the relief is built into the legislation, together with an explicit right of appeal if HMRC fail to make a payment where the individual believes one to be due.

Finally, this issue has been known about for a long time and LITRG is disappointed that there is no proposed redress for either individuals’ historic financial loss or further losses between now and introduction of top-up payments from April 2024. The legislation could therefore provide for further backdating to help redress this, which would (with a larger initial payment being on offer) help to encourage take-up by those affected.

The full LITRG submission is available at : www.litrg.org.uk/ref2680 and the full CIOT submission at: www.tax.org.uk/ref992

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