FA 2017 Employment Taxes Provisions: the ins and the outs

Employment Tax

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The first Finance Act of 2017 introduces new IR35 rules for workers in the public sector, changes the way salary sacrificed benefits-in-kind are taxed and imposes a 25% tax charge on transferring pension savings offshore.

Despite the shortened timetable for the Finance Bill, with the House of Commons stages passing in one short afternoon on the 25 April and the Bill receiving Royal Asset on the 27 April, the government introducing a number of amendments to the clauses and schedules retained, particularly those relating to employment taxes.

So what's in and what's out? Out, but expected to make a return in a post-election Finance Bill, are clauses on:

- aligning the time limits for making good non-payrolled benefits-in-kind;
- the company car tax regime for ultra-low emission vehicles;
- increasing the pensions advice exemption;
- broadening the legal expenses exemption;
- amendments to the taxation of termination payments;
- an amendment to the PAYE settlement agreement rules;
- a decrease in the money purchase annual allowance where an individual has commenced accessing their pensions savings; and
- (for the most part) disguised remuneration.

Crucially, what was retained were the clauses and schedules on:

- workers' services provided to public sector bodies through intermediaries;
- optional remuneration arrangements;
- an amendment to the benefit-in-kind valuation rules where employers make assets available to employees without transferring the asset;

- changes to the taxation of overseas pensions;
- a new charge on transferring pension savings offshore;
- the removal of the tax advantages linked to employee shareholder shares; and
- some amendments to the disguised remuneration rules.

We comment further on some of these below.

Workers' services provided to public sector through intermediaries

Section 6 and Schedule 1 introduce a new Chapter 10 to Part 2 of the Income Tax (Earnings and Pensions) Act 2003. In effect, Chapter 10 amends the intermediaries' legislation (commonly known as IR35) in Chapter 8 by moving responsibility for operating the current intermediaries' rules from an individual worker's intermediary (typically a personal service company (PSC)) to any public sector, agency or third party paying that intermediary. In addition, the 5% allowance currently available to those who apply the IR35 rules to reflect the costs of administering the rules will be removed for those who work in the public sector. These changes apply to payments made on or after 6 April 2017 even if the contract was entered into for work carried out prior to 6 April.

The government tabled an amendment to the Schedule aimed at clarifying the position of those providing NHS type services (for example high street pharmacies and opticians). The amendment revises the definition of 'public authority' to ensure that private sector retailers are not brought into scope of Chapter 10 simply because they provide services on behalf of the NHS. It does not change the position for NHS hospitals who continue to have to consider whether to apply Chapter 10 to all contractors working for them through an intermediary, including those providing ophthalmic and pharmaceutical services. Furthermore, the definition of 'public authority' continues to include general practitioner surgeries and dental practices or surgeries providing NHS medical and dental services. A similar amendment has been made to the NICs regulations.

Optional remuneration arrangements

Section 7 and Schedule 2 change the tax treatment where a benefit-in-kind (BIK) is provided through 'optional remuneration arrangements' (OpRA) (for example salary sacrifice and flexible benefit arrangements) so that, with effect from 6 April 2017,

the BIK is chargeable to income tax and Class 1A employer NICs (but not Class 1 NICs), even if the BIK is normally exempt from tax and NICs, at the greater of the amount of salary given up in exchange for the BIK and the cash equivalent of the BIK.

The amendments to Schedule 2 add ‘section 307’ to the list of exemptions excluded from OpRA but only to the extent that section 307 applies to pensions. This addresses concerns previously raised around salary sacrificed employer contributions to overseas pension schemes. The amendment does not include death-in-service arrangements and the CIOT’s concerns in relation to death-in-service policies funded via salary sacrifice arrangements being within the scope of OpRA therefore remain.

Overseas pensions

Section 9 and Schedule 3 provide for a closer alignment of the UK tax treatment of payments out of ‘foreign pension schemes’ with the UK’s domestic tax regime and pension schemes used for those employed abroad. It:

1. extends the period over which UK tax charges arise on payments out of funds that have had UK tax relief in relevant non-UK schemes (RNUKS);
2. closes ‘section 615, ITEPA 2003’ schemes to new savings;
3. aligns the tax treatment of funds transferred between registered pension schemes (RPS); and
4. brings payments of foreign pensions and lump sums fully into tax for UK residents.

The conditions that a pension scheme has to meet to be a qualifying overseas pension scheme (QOPS) or a qualifying recognised overseas pension scheme (QROPS) are also being updated.

The amendments to Schedule 3 that relate to ‘section 615’ schemes concern pension savings for those working solely outside the UK. This is designed to prevent section 615 schemes from receiving additional contributions after 6 April 2017 such that protection as a relevant retirement benefit scheme is only retained where no contributions are received on or after 6 April 2017. One of the amendments has reinforced previously raised concerns about the extent of the powers being given to HMRC to amend/qualify primary legislation in the future.

Further amendments to Schedule 3 concern the taxation of lump sums paid under foreign pension schemes. These amendments are designed to ensure that the new rules on taxing lump sums only apply to lump sums paid out of funds built up in overseas employer-financed retirement benefit schemes (EFRBS) since 6 April 2017. Without this change those who have worked potentially their entire career outside the UK but who choose to settle in the UK pre-retirement would, potentially, have been taxed in full on any lump sum received. Not only would this have removed the longstanding relief for Foreign Service but it would have meant a lump sum from an overseas scheme would have been taxed more harshly than under a registered scheme. This point had previously been raised and the amendment in respect of pre 6 April 2017 rights was therefore welcome. It will prevent ‘cliff-edge’ taxation of those who were unable to retire and take lump sums before 6 April 2017.