Finance (No.2) Bill 2019-21 Clause 22: Payments on termination of employment

BRIEFING FOR MPS ON THE FINANCE BILL BY ICAEW TAX FACULTY

WHO WE ARE

Please see Appendix 1.

EXECUTIVE SUMMARY

1. We recommend that subclause 22(7)(c) (which inserts new subsection 402D(6A) ITEPA 2003) needs to make it clear that the method of calculation of post-employment notice pay that it sets out is an alternative that can be used rather than must be used.

2. This would make the legislation on termination payments agree with the policy intent stated in the Finance Bill Explanatory Notes, the Notes on Finance Bill resolutions 2021 and HMRC's existing guidance.

THE MEASURE

3. Clause 22 amends the income tax treatment of termination payments. As explained in the Finance Bill Explanatory Notes (FBEN) at paragraph 11, subclause 22(7)(c) provides for the insertion into s402D ITEPA 2003 of a new subsection (6A) setting out an alternative post-employment notice pay (PENP) calculation for certain employees paid by equal monthly instalments whose post-employment notice period is not a whole number of months.

4. The clause will apply to those individuals who both have their employment terminated and receive a termination payment on or after 6 April 2021.

OUR CONCERN

5. The alternative calculation in new subsection 402D(6A) which is being inserted by subclause 22(7)(c) is described in both the FBEN at para 11 and the Notes on Finance Bill resolutions 2021 at para 17 as an alternative calculation.

6. As stated in the FBEN background note at para 15, the method for calculating PENP set out in subclause 22(7)(c) has been allowed since 2019 by HMRC under its collection and management powers as an alternative calculation where it benefits of the employee (further details are in HMRC's employment income manual at EIM13886).

7. We believe that the intention of legislating this point is to put into law the ability to choose to adopt the alternative method. This is in line with HMRC's policy of enacting extra-statutory concessions and other easements following the *Wilkinson* case.

8. However, the Finance Bill, if enacted, will make the method of calculation compulsory.

9. We therefore believe that the proposed legislation does not reflect intended policy.

OUR RECOMMENDATION

10. We recommend that new subsection 402D(6A) ITEPA 2003 being inserted by FB subclause 22(7)(c) makes it clear that the calculation is an alternative that can be used rather than must be used.

SUGGESTED AMENDMENT

11. Page 17, line 17, insert after "then" and before "——"

"where it is to the benefit of the employee the following calculation may be used"

FURTHER INFORMATION

As part of our Royal Charter, we have a duty to inform policy in the public interest.

Contact details

Daniel Ellis
ICAEW Policy & Public Affairs Manager
T +44 (0)20 7920 8591
M +44 (0)7557 160 953
Daniel.Ellis@icaew.com

APPENDIX 1

ICAEW TAX FACULTY – WHO WE ARE

Internationally recognised as a source of expertise, ICAEW Tax Faculty is a leading authority on taxation and is the voice of tax for ICAEW. It is responsible for making all submissions to the tax authorities on behalf of ICAEW, drawing upon the knowledge and experience of ICAEW's membership. The Tax Faculty's work is directly supported by over 130 active members, many of them well-known names in the tax world, who work across the complete spectrum of tax, both in practice and in business. ICAEW Tax Faculty's *Ten Tenets for a Better Tax System* are summarised in Appendix 2.

ICAEW is a world-leading professional body established under a Royal Charter to serve the public interest. In pursuit of its vision of a world of strong economies, ICAEW works with governments, regulators and businesses and it leads, connects, supports and regulates more than 186,500 chartered accountant members and students around the world. ICAEW members work in all types of private and public organisations, including public practice firms, and are trained to provide clarity and rigour and apply the highest professional, technical and ethical standards.

APPENDIX 2

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.

2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.

3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.

4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.

5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.

6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.

7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.

8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.

9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.

10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see https://goo.gl/x6UjJ5).