National Insurance Contributions Bill 2021: CIOT comments

Employment Tax

30 July 2021

The CIOT has submitted evidence to Parliament on measures in a National Insurance Contributions Bill which introduces secondary Class 1 national insurance contribution reliefs for employers of workers in freeports and employers of armed forces veterans; exempts payments under the self-isolation support scheme from NICs; and extends anti-avoidance measures under the disclosure of tax avoidance scheme included in the FA 2021 to national insurance contributions.

The National Insurance Contributions (NIC) Bill introduces two new secondary Class 1 NIC reliefs (for employers of workers in freeports and employers of armed forces veterans); extends anti-avoidance measures included in the FA 2021 to NICs; and exempts self-isolation support scheme payments from NIC. The Bill passed its committee stage unamended in a single Public Bill Committee sitting on Tuesday 22 June. The debate is on the UK Parliament website (tinyurl.com/57tfk7ds) and a CIOT Blog summarising the Committee's debate can be read on our website here: tinyurl.com/w8j3mmhk. Our understanding is that the only external briefing on the measures was the CIOT's briefing to the Committee and it is pleasing to note that the shadow Financial Secretary to the Treasury thanked us for our comments.

Freeports

In the March 2021 Budget, the Chancellor announced that eight freeports will be created in England: East Midlands Airport, Felixstowe and Harwich, Humber, Liverpool City Region, Plymouth and South Devon, Solent, Thames and Teesside. Discussions continue around further freeports in Scotland, Wales and Northern Ireland.

The NICs Bill will enable qualifying employers to apply a zero-rate secondary Class 1 NIC up to a prescribed upper secondary threshold for a period of 36 months from the commencement of employment of eligible employees newly employed at freeport tax sites, where the employment commences during the period from 6 April 2022 to 5 April 2026. One of our concerns was that the relief applies only to new employees commencing employment from 6 April 2022, when it is expected that UK freeports will start operating in 2021. Freeport businesses will, no doubt, wish to take on new employees at that point rather than waiting until April 2022 but it seems they will have a perverse fiscal incentive not to do so.

We also queried the requirement that to be eligible an employee must spend 60% or more of their employed time in a single freeport tax site, which means that if an employee splits their working time equally between two freeport sites the employee will not qualify as a freeport employee. During the debate, the Financial Secretary to the Treasury Jesse Norman confirmed that this was the intended policy.

One aspect that, disappointingly, was not discussed was the definition of 'public authority' in respect of freeport employers. The definition includes 'any person whose activities involve the performance of functions (whether or not in the United Kingdom) which are of a public nature' and is potentially much wider than the definition used elsewhere – for example, under the off-payroll working rules, which is based on the definition used in the UK and Scottish Freedom of Information Acts. Our concern is that this wide definition could be applied to private businesses that are operating within a freeport carrying out functions that are normally carried out by public authorities, such as street cleaning, road works, etc, and, as a result, exclude these businesses from the relief.

Veterans

This relief will enable employers to apply a zero-rate secondary Class 1 NIC up to the prescribed upper secondary threshold on the employment income of eligible armed forces veterans during their first year of civilian employment. Subsequent and concurrent employers can also benefit from this relief during the one year period starting from the first day of their first post-armed forces employment. To qualify, a veteran must have completed at least one day of basic training in the armed forces. The relief is available to employers from 6 April 2021 to 5 April 2024.

The one point we raised with this new relief is that although it is available from 6 April 2021, employers will need to pay the secondary Class 1 NICs on the earnings of eligible veterans for the 2021/22 tax year and then claim this back retrospectively in April 2022. We suggested consideration of permitting employers to self-serve the relief for 2021/22 (once the legislation has been passed), given the very challenging circumstances of the current pandemic and the cash flow implications arising. It is understood that the minister is ‘happy to consider the matter further and to ask HMRC to consider it’.

Disclosure of contributions avoidance arrangements

This legislation widens existing regulation making powers so that regulations can be made for NIC purposes mirroring the amendments to the disclosure of tax avoidance schemes (DOTAS) procedures included in FA 2021.

Our comments largely replicated those we made on the companion measures in the FA 2021. We were supportive of robust action in this area but were concerned that the seemingly endless chasing down of a small number of promoters through potentially widely applicable legislative change seems to be achieving diminishing returns while adding significant complexity to the tax system. We included a number of suggestions for potentially more effective approaches. In particular, we noted that there is a hard core of between 20 and 30 promoters, identified by HMRC, who clearly do not play by the rules. This was acknowledged by the minister who added that: ‘HMRC are vigorously applying themselves to curtailing that activity and to supporting and protecting taxpayers’.