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DRAFT LEGISLATION: THE SOCIAL SECURITY (CONTRIBUTIONS) (AMENDMENT NO.X) REGULATIONS 2020

Response by Association of Taxation Technicians

1 Introduction

- 1.1 The Association of Taxation Technicians (ATT) is pleased to have the opportunity to provide comments on the draft *Social Security (Contributions) (Amendment No. X) Regulations 2020* ('the Draft Legislation') and accompanying technical overview issued on 16 October 2019¹.
- 1.2 The primary charitable objective of the ATT is to promote education and the study of tax administration and practice. We place a strong emphasis on the practicalities of the tax system. Our work in this area draws heavily on the experience of our members who assist thousands of businesses and individuals to comply with their taxation obligations. This response is written with that background.
- 1.3 Our response is set out below. Section 2 discusses the uncertainty as to exactly when the draft legislation will take effect in relation to termination payments. Section 3 goes on to outline some comments we have on the format of the draft legislation, the guidance which will be needed and some of the terms used.
- 1.4 We would be pleased to discuss any aspect of this response further and contact details can be found in Section 4.

2 Commencement: termination payments

- 2.1 The draft legislation and accompanying technical overview clearly state that the regulations have effect in relation to sporting testimonials which are announced on or after 6 April 2020. However, there is no corresponding clarification as to when they are intended take effect in relation to termination payments.
- 2.2 We are uncertain whether the draft legislation is intended to apply to *any* payments which are made on or after April 2020 in respect of termination, or only to terminations which take place on or after 6 April 2020. For example, if an employment was terminated on 31 December 2019 and payments in lieu of notice are paid over 12 monthly instalments, will Class 1A NICs be payable on the payments made after 6 April 2020, or not payable at all since the termination took place before that date?

¹ <https://www.gov.uk/government/consultations/draft-legislation-the-social-security-contributions-amendment-no-x-regulations-2020>

- 2.3 New regulation 40C² would seem to indicate that, if a payment is subject to income tax in the tax year 2020/21, then it will also be subject to Class 1A NICs in that year. This is on the grounds that regulation 40C applies to a person liable to pay Class 1A contributions in respect of a termination award in accordance with section 10(1A) and (3A) of the Contributions and Benefits Act. Those sections indicate that Class 1A NICs are payable in a tax year in respect of a termination payment if the payment is chargeable to income tax in that tax year. However, this is not at all clear. In addition, sections 10(1A) and (3A) are inserted into the Contributions and Benefits Act by section 2(1) of the National Insurance Contributions (Termination Awards and Sporting Testimonials) Act 2019, which has not yet been brought into force.
- 2.4 We recommend that it be made clear in the final version (or as a minimum in the accompanying documents and guidance) exactly when the draft legislation takes effect in relation to termination payments. It would also be helpful for guidance to address how payment arrangements which span this commencement date (such as those set out at 2.2. above) are to be treated for Class 1A purposes.

3 Format of draft legislation, terminology and other comments

- 3.1 Whilst the Class 1A NIC treatment of terminations payments and sporting testimonial payments has common features, they are very different in practice. It is therefore helpful that new regulations 40C and 40D of the Social Security (Contributions) Regulations 2001 (as inserted by regulation 7 of the draft legislation) deal separately with the two types of payment.
- 3.2 However, it would be helpful to include further introductory signposting in the draft legislation to indicate which parts of it relate to which kind of payment. For example, this could make it clear that:
- regulation 1(1) applies to both termination payments and sporting testimonials, whereas regulation 1(2) only applies to sporting testimonials;
 - regulations 3(a) to (c) only apply to sporting testimonials, whereas regulation 3(d) applies only to termination payments; and
 - regulation 4 applies only to sporting testimonials whereas regulations 5, 6 and 8 appear to apply to both types of payment.
- 3.3 In order to ensure the smooth roll out of the changes introduced by the draft legislation, it will be important to issue comprehensive practical guidance to employers. As well as the commencement issues discussed at 2.4 above, this guidance should also address the treatment of non-cash benefits which may continue post termination, such as the extension of private medical cover. It will also be important to provide software developers with the required specifications and information as soon as possible so that software is ready in time for commencement.
- 3.4 Regulation 3(d) uses the relatively unusual term *blood relative* in the context of termination payments. Whilst this term is used elsewhere in related tax legislation - for example, s401 ITEPA 2003 and s1(9) and 2(9) of the National Insurance Contributions (Termination Awards and Sporting Testimonials) Act 2019 - we are unable to find a definition of it for either income tax or NIC purposes. It would be helpful for the draft legislation or accompanying guidance to either direct readers to the relevant definition, or explain how it should be interpreted in practice.

² Inserted into the Social Security (Contributions) Regulations 2001 by regulation 7 of the draft legislation.

- 3.5 Regulation 3(d) also uses the term *dependent* in relation to termination payments, and it would be similarly helpful to provide a signpost to the relevant definition of this term. We also note that in primary legislation this term is usually spelt *dependant*.
- 3.6 Finally, we note that the word 'in' appears to be missing from before 'paragraph 5' in new regulation 40D(6).

4 Contact details

- 4.1 We would be pleased to join in any discussion relating to this consultation. Should you wish to discuss any aspect of this response, please contact our relevant Technical Officer, Emma Rawson (erawson@att.org.uk, mobile 07773 087111).

The Association of Taxation Technicians

5 Note

- 5.1 The Association is a charity and the leading professional body for those providing UK tax compliance services. Our primary charitable objective is to promote education and the study of tax administration and practice. One of our key aims is to provide an appropriate qualification for individuals who undertake tax compliance work. Drawing on our members' practical experience and knowledge, we contribute to consultations on the development of the UK tax system and seek to ensure that, for the general public, it is workable and as fair as possible.

Our members are qualified by examination and practical experience. They commit to the highest standards of professional conduct and ensure that their tax knowledge is constantly kept up to date. Members may be found in private practice, commerce and industry, government and academia.

The Association has more than 9,000 members and Fellows together with over 6,000 students. Members and Fellows use the practising title of 'Taxation Technician' or 'Taxation Technician (Fellow)' and the designatory letters 'ATT' and 'ATT (Fellow)' respectively.