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1 February 2017

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Dear Sirs

Finance Bill: comments on employer advice exemption clause 6

We are writing with comments on the employer advice exemption clause 6.

Overall, we very much support the proposal to increase the threshold and to remove the cliff-edge operation of the current exemption.

Our comments on some detailed points are set out below.

We do have concerns about how the conditions A and B are intended to work in order to for the employer to be able to offer advice in a way that is tax efficient for its staff:

It looks as though, for anyone [employee/prospective/pensioner] to be covered by the tax exemption, broadly a "[advice] scheme" has to be open to ALL employees subject to a few design easements: a location restriction can be introduced and an age limit can be introduced. This was (ignoring the easements) the same condition as applies for the current £150 tax exemption; but the current exemption, with its lower amount and cliff edge approach, may have been seldom used and hence the conditions seldom tested.

Some employers may be willing to provide advice for all employees – and perhaps that is the only target of policy intent.

But it would be helpful if there was flexibility to assist employers that are prepared to provide advice that is more targeted.

For example, the employer may have a pension scheme where most members (group A) have a straightforward position and the employer does not feel the need to offer one-to-one advice. However, a smaller group of members (B) have more complicated positions and the employer considers it fair that these people are offered some (paid for) advice to help them. B staff may not be highly paid, they may simply have arrived in the company's current pension scheme via a different original pension scheme.

As drafted, unless the B staff could be caught with one of the drafted easements (eg they were all located separately from anybody else), the employer could not offer the advice without the individual suffering tax charges.

Similarly, it may be that the employer wants to focus an offer just on deferred pensioners [perhaps just as they are reaching age 50] and not active employees.

We also question whether the reference to the "scheme" (ie the provision of advice) means one offering that has to be the same for all, eg the advice has to involve the same spend per person?

Finally, as drafted, if "all employees" (or all at a particular location) are included, then it seems that any deferreds and retirees get the exemption too; but otherwise the latter do not get any exemption at all. Is that policy intent? [Perhaps the latter are exempt from the benefit in kind charge anyway unless they have also been an employee in the tax year?]

Further detailed points on the employer advice exemption clause are:

- The intention of clause 6 and the proposed s308C is to make clear that employer financed financial advice in connection with pension arrangements is not (to the extent of the first £500), taxed as a benefit in kind when given to active/prospective and former employees. However, it could be interpreted that the same benefit, given to former employees who have retired, is taxable. It would be helpful to have confirmation in the Bill that such advice given to retired members is intended to benefit from the same exemption provided for active and deferred members. Importantly, the same should apply in relation to s308B – independent advice in respect of conversions and transfers.
- Can you also make clear in legislation, or in guidance, that any excess over £500 will be treated as income included in the benefits code in Part 3 ITEPA 2003 in the normal way. This would then clarify that the excess will not normally be taxable when the advice is given to former employees (and also that it will not be treated as a 'relevant benefit', thus constituting an EFRBS).

We do feel that the wording of new 308C(2) and (3), when read with 308C(1), is not very clear – the intention is that the exemption is given to the first £500 of the employer financed relevant pensions advice (with the excess being taxable), but the wording could be read as suggesting that the exemption is being given only in respect of financial advice with a value up to £500 (ie along the lines of the current rule, but just with the limit raised).

We note also that in new inserted 308C(5) the relevant pensions advice is in relation to a person's pension arrangements or use of those funds. We believe it should be made clear, as indicated in the policy paper, that this advice might relate to any pension arrangements of the member, not just those of the particular employer (if this is not the intention then the relevant pensions advice needs to be defined as relating to the pension arrangements sponsored by the employer or former employer).

I hope you find our comments helpful. If you wish to follow up any matters, please contact Jillian Pegrum, a member of our Pensions Tax Committee, at jillian.pegrum@aonhewitt.com

Kind regards



Bob Scott

Chairman and Director

On behalf of the Association of Consulting Actuaries Limited

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