



ICAEW REPRESENTATION 142/17

TAX REPRESENTATION

FINANCE (No.2) BILL 2017-19, CLAUSE 10

TERMINATION PAYMENTS: FOREIGN SERVICE

Text of submission by ICAEW Tax Faculty on 22 December 2017 to House of Commons Public Bill Committee in response to [invitation dated 14 December 2017 to “have your say”](#)

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TERMINATION PAYMENTS: FOREIGN SERVICE

Text of submission

WHO WE ARE

1. Please see Appendix 1.

SUMMARY OF THE MEASURE

2. The measure will abolish foreign service relief (FSR) on termination payments for non-seafarer employees who have worked abroad but are resident in the UK in the tax year in which their employment is terminated.
3. Under current rules, FSR allows termination payments for certain employees to be exempt from income tax either completely or proportionately, depending on their time worked outside the UK for that employer.
4. Under the new rules, employees who have worked abroad but are resident in the UK in the year their employment is terminated will be taxed in the same way as employees who have not worked abroad.
5. The changes to FSR will take effect for terminations from 6 April 2018 where the payment is received after 13 September 2017.

EXECUTIVE SUMMARY

6. The new regime is far more complicated than the current rules for businesses that have overseas employees, exacerbated by tax and NIC changes starting at different times. Businesses need time to change processes. Employers and software houses need definitive guidance asap. We recommend that the changeover be delayed until 6 April 2019.

OUR CONCERNS

Technical issues

7. HMRC's original consultation of July 2015 and the government's response with draft legislation published in August 2016 cited several criteria underpinning the new regime including 'clarity' and 'administrative simplicity'. Regrettably, the new rules both in the recently enacted Finance (No.2) Act 2017 and in clause 10 of the Finance Bill currently under consideration will be more complicated than those they replace, which is contrary not only to the government's own criteria but also to the second, third and fourth of our own [Ten Tenets for Better Tax System](#), namely 'Certain', 'Simple' and 'Easy to collect and to calculate'.
8. Withdrawing FSR for employees resident at the time their employment is terminated seems at odds with the government's tax fairness agenda. We acknowledge that many employers do not give relief for FSR via payroll, instead preferring to leave it to terminated employees to claim it themselves via self-assessment. This arises for several reasons, eg because the individuals would have more complete records of periods spent working in and outside the UK, and the relief cannot be accurately calculated and claimed by the deadline by which payroll data has to be submitted to HMRC. The proposed revision will be even more difficult in many cases because claiming foreign tax credits (FTC) is far more difficult under payroll and cannot be 100% accurate. To be allowed to give an estimated amount of relief an employer has to have a special sort of PAYE scheme (known as an 'Appendix 5' PAYE scheme) and if they do not have such a scheme, relief has to be given by a coding adjustment and it is difficult to see how this can be achieved in time for the payroll run.

9. Under the new regime, for payments made in the period January to 5 April, an initial estimate of the FTC will in many cases need to be made and then the relief corrected when the foreign tax return is filed. This arises because most countries have a calendar tax year end and consequently the amount of relief due cannot be calculated until after the end of the calendar year and in fact this may not be possible until after the filing deadline of the tax return. This is again more complicated than the system it replaces.
10. Globally-mobile employees are the type of individuals who would claim FSR. Some of these employees will not know whether or not they are resident at the time of payment, or, when they realise the difference between being resident or non-resident, may delay becoming resident. In many cases the employee will not know their residence status because this can be affected by actions after the time of payment. In any event, the employer has no control over the actions of their ex-employee.
11. The new residence test produces more uncertainty than the regime it is replacing. For example, an individual who has no connection with the UK may decide after having their employment terminated that the UK is the best place to become employed once more. If they then come to the UK say four months after termination and become resident, then, because the split year rules do not apply in respect of termination payments and the individual is considered resident for the year, the payment will become taxable when in reality there is no nexus with the UK.

Employer processes and procedures, guidance and software

12. The main administrative difficulty with the new regime is that, within businesses which operate across borders, the requirement to ascertain the residence status of employees to whom termination payments are to be made will require fundamental changes to policies, processes and systems to enable the appropriate residence status of employees to be determined – in some cases by necessity provisionally – and hence the appropriate tax and NIC treatment.
13. We are concerned that even at this stage HMRC has not made available a complete package of guidance to ensure that employers can know for sure what to do.
14. Businesses will need to cope with, so guidance is needed on, inter alia:
 - how to determine the residence status of employees, especially given that the actual position under the statutory residence test (SRT) may not be known at the point of payment (determining residence is the starting point before considering tax and NIC);
 - the new income tax rules for termination payments;
 - whether terminations this tax year for which the termination payment is made next year and vice versa will be subject to the existing or the new rules;
 - the changes to the national insurance contributions (NIC) treatment of termination payments;
 - the dates from which the NIC changes will take place (which confusingly will not all be the same for all Classes of NIC nor coincide with the starting dates of the tax changes);
 - whether and if so which payments subject to NIC are to be included in the 'paybill' for calculating apprenticeship levy; and
 - how termination payments will be displayed when businesses access their business tax accounts, and how agents will access these details.
15. We welcomed the original good intentions of government in specifying a commencement date of April 2018 for the new termination payments regime as this was predicated on most of the legislation being enacted in July 2017 with a summer 2017 consultation on the withdrawal of FSR, so that a more widely known about outcome could be enacted in March 2018 with guidance available for employers and software houses. However, events have conspired to mean that this lead time has not been available and, three months before go-live, employers are left guessing what to do.

OUR RECOMMENDATIONS

- 16.** We recommend that all the changes to termination payments are delayed until 6 April 2019 so that the original objectives of government – that the changeover be planned with necessary changes to business processes able to be made before go-live – can be met. This would also mean that:
- the tax and NIC changes can all start at the same time
 - HMRC has time to produce full guidance, and
 - employers have time to change their processes and procedures,
- 17.** We should welcome a ministerial undertaking that the government will very early in the new year publish detailed guidance covering at least the points above.

SUGGESTED AMENDMENTS

- 18.** Bill page 7, line 17, in subsection (5)(a), after “April” replace “2018 with “2019”.
- 19.** Bill page 7, line 18, insert after subsection (5): ‘(6) In Finance (No.2) Act 2017, section 5, replace “2018-19” with “2019-20”.’.

ICAEW TAX FACULTY – WHO WE ARE

ICAEW Tax Faculty is internationally recognised as a source of expertise and is a leading authority on taxation. It is responsible for making submissions to tax authorities on behalf of ICAEW and does this with support from over 130 volunteers, many of whom are well-known names in the tax world.

ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter, working in the public interest. ICAEW's regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the UK Financial Reporting Council. We provide leadership and practical support to over 147,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.

ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value ICAEW is a world-leading professional accountancy body.