

## Finance (No 2) Bill (2022-23)

### Clause 25: Relief relating to net pay arrangements, introducing a new section 193A FA 2004 Briefing from the Low Incomes Tax Reform Group (LITRG)

#### 1 Executive Summary

- 1.1 We broadly welcome that clause 25 introduces ‘top-up payments’ for low earners contributing to net pay pension schemes who currently miss out on a government pension savings incentive. However, we are very concerned about anticipated low take-up of the payments by the population and about how these payments will be implemented. We seek clarification of a number of points relating to the proposed legislation, and propose a number of amendments:
- 1.2 **Ability to challenge/claim a payment:** The legislation should be amended to oblige HMRC to provide calculations for these payments. Also, individuals should be permitted to challenge the amount paid, or to claim a payment if HMRC do not make one.
- 1.3 **Data to be used by HMRC to ascertain total income:** The government should clarify how HMRC will ascertain an individual's total income for the relevant tax year in order to calculate the appropriate amount to pay.
- 1.4 **Claw back if HMRC's calculation is incorrect:** The legislation should state that HMRC cannot claw back a payment if it is found to be excessive.
- 1.5 **Treatment of the payments:** We would prefer the payments to be treated as tax refunds, rather than as taxable employed earnings. This would put net pay contributors in a more comparable position to those saving into relief at source schemes and avoid some odd circularity issues, such as amendment of Self Assessment tax returns for the relevant tax year.
- 1.6 **HMRC notification to DWP for universal credit claimants:** HMRC should be obliged to notify DWP of payments made to universal credit claimants.
- 1.7 **Implementation/backdating:** Initial payments should be backdated to 2023/24 (rather than starting from 2024/25 as currently proposed).
- 1.8 **Awareness:** The government must collaborate on a publicity campaign with the pensions industry, employers, payroll industry and third sector representatives so that low earners are aware of how to obtain their payment and to minimise the risk of fraudulent/scam activity.

## 2 Introduction

- 2.1 Tax relief on pension contributions can be given to individual scheme members in two ways: relief at source (RAS) and net pay arrangements (NPA). This is set out in Finance Act 2004, Part 4.
- 2.2 Under RAS, even non-taxpayers and non-earners (via stakeholder pensions) are given basic rate tax relief on relievable pension contributions, but this is not available to non-taxpayers in NPA schemes. The individual has no control over which form of scheme their employer chooses. Essentially, a saving of £100 into a pension costs a RAS saver £80, whereas it costs a NPA saver the full £100.<sup>1</sup>
- 2.3 In 2018 LITRG joined together with pension providers, Age UK, the TUC and others to form the Net Pay Action Group to campaign for fairness for those in NPA schemes. We believe the issue is an unintended anomaly, given that the intention behind auto-enrolment into workplace pensions was that the worker, their employer and the government would contribute to pension savings for all. We were delighted to obtain a commitment to act in the 2019 Conservative general election manifesto<sup>2</sup>, which has led, via a consultation, to this measure.
- 2.4 Clause 25 is the government's proposed way to fulfil its manifesto commitment. It introduces a new section 193A into Finance Act 2004, requiring HMRC to make 'top-up payments' to NPA savers. The payment would amount to £20 in the example in 2.2. These payments will not, however, be treated as tax relief (as equivalent amounts are for RAS savers), but as employed earnings.

## 3 Ability to challenge/claim a payment

- 3.1 The proposed section 193A(2) places the onus on HMRC to make payments to eligible individuals. While this is welcome, in that it forces HMRC to take the initial step, HMRC do not always get things right. Therefore, an individual must be able to challenge the amount paid if they think it is incorrect, or to have the ability to initiate a claim for payment if HMRC do not offer one. HMRC also need to provide individuals with a calculation of the payment so that it can be checked. To proceed otherwise would seem to be contrary to HMRC's Charter commitments.<sup>3</sup>
- 3.2 We therefore propose the following amendments:

On page 18, at the end of line 23, insert—

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<sup>1</sup> Across the UK, an estimated 1.2m low earners (75% of whom are women) in 'net pay' pension schemes are affected. HMRC's estimates have varied regarding the numbers affected from the current 1.2m, to 1.5m previously. The numbers affected might have reduced over recent times due to increases in the National Minimum Wage and/or the freezing of the personal allowance.

<sup>2</sup> Conservative Manifesto 2019, page 16: [https://assets-global.website-files.com/5da42e2cae7ebd3f8bde353c/5dda924905da587992a064ba\\_Conervative%202019%20Manifesto.pdf](https://assets-global.website-files.com/5da42e2cae7ebd3f8bde353c/5dda924905da587992a064ba_Conervative%202019%20Manifesto.pdf)

<sup>3</sup> For example, to give clear information and to allow an individual to disagree with a tax decision. See: <https://www.gov.uk/government/publications/hmrc-charter/the-hmrc-charter>

“The arrangements must include that the Commissioners are required to provide to an individual their calculation of the appropriate amount under subsection (3).”

*Explanatory statement: This amendment would require HMRC to provide recipients of the relief with a calculation of the payment so that it can be checked.*

And:

On page 18, after line 26, insert—

“The arrangements must include procedures for the purposes of allowing an individual to—

(a) challenge the amount the Commissioners have determined to be the appropriate amount under subsection (3), and

(b) make a claim requesting that the Commissioners calculate and pay an appropriate amount in accordance with subsection (3) where the Commissioners have failed to make such a payment.

The individual must give notice to the Commissioners of any such challenge or claim no later than four years from the end of the relevant tax year as defined in subsection (1)(b).”

*Explanatory statement: This amendment would enable a recipient of the relief to challenge the amount determined by HMRC if they think it is incorrect, and would allow someone not identified as eligible for the relief by HMRC to initiate a claim for it.*

#### 4 Data to be used by HMRC to ascertain total income

- 4.1 The draft version of this legislation published last summer<sup>1</sup> said that HMRC would base the calculation of the payment to be made under the proposed section 193A on earnings from employment. HMRC have this information – and details of amounts paid to net pay pension schemes – from data submitted by employers under the Pay As You Earn real-time information system (RTI).
- 4.2 Basing the calculation on total income – as is now the case under subsection (3)(a) – is likely to be more difficult, as it involves putting together further data for each individual, such as bank interest received or self-employed earnings.
- 4.3 It would therefore be helpful if the government could:
  - clarify how HMRC will ascertain an individual’s total income for the relevant tax year in order to arrive at the appropriate amount to pay; and

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<sup>1</sup> See HMRC policy paper, 20 July 2022: <https://www.gov.uk/government/publications/low-earners-anomaly-pensions-relief-relating-to-net-pay-arrangements>

- give an assurance that basing the calculations on total income will not delay the payments being made until after the 31 January deadline for submission of Self Assessment tax returns for the relevant tax year, where no Self Assessment tax return has been issued to an individual.

## 5 Claw back if HMRC's calculation is incorrect

- 5.1 Related to our comments under heading 4 above, there is a risk that HMRC's calculation of these payments might be incorrect such that an individual is paid too much – for example, if HMRC do not ascertain the full extent of 'total income'<sup>1</sup> at the point of making the calculation. As far as we can see, there is no provision for HMRC to claw back a payment in full or in part if it is found to have been excessive, but it would be preferable to state this expressly.
- 5.2 We therefore propose the following amendment:

On page 18, after line 26, insert—

"Under these arrangements, the Commissioners may not recover any payment made under this section, in full or in part, if it is later found to have been excessive."

*Explanatory statement: This amendment would make clear that HMRC may not claw back any payments made under the new section 193A FA2004 from recipients if HMRC later decide that they have been overpaid.*

## 6 Treatment of the payments

- 6.1 We have consistently put forward that any top-up payments made to net pay contributors should be made as part of the individual's overall tax calculation for the year (using HMRC's standard 'P800' end of year reconciliation) and that they should be treated as a tax refund for the relevant year. We maintain that this would be a simpler solution in practical terms than treating the payments as employed earnings as proposed in subsection (6).
- 6.2 Treating the payments as tax refunds would put net pay contributors in a more comparable position to those saving into relief at source schemes.<sup>2</sup> It would also avoid some odd circularity issues. For example, if an individual receives one of these payments having filed a Self Assessment tax return for the relevant tax year, their return for that year would then be incorrect as it would not be a full record of their income for that year. Strictly speaking, they would therefore need to amend the return for that year, even if the addition of the top-up payment did not create a tax liability.

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<sup>1</sup> Total income is defined in the proposed subsection (8) as having the meaning given by section 23 of ITA 2007.

<sup>2</sup> We demonstrated why this would be the case in section 4.2 and appendices 1 & 2 of our submission relating to the initial draft of the proposed section 193A, see: <https://www.litrg.org.uk/latest-news/submissions/220914-draft-legislation-finance-bill-202223-pensions-relief-relating-net>

- 6.3 On the basis of the legislation as it stands, we propose the following amendment to clarify the interaction with Self Assessment:

On page 18, after line 41, insert—

“The arrangements must include a procedure for the Commissioners to correct, in accordance with section 9ZB TMA 1970, an individual’s personal return for the relevant tax year to include the appropriate amount paid under this section.”

*Explanatory statement: This amendment would enable HMRC to correct the tax return of a recipient of a payment under the new section 193A FA2004, to reflect that the receipt of the payment has increased the recipient’s income for the year.*

## 7 HMRC notification to DWP for universal credit claimants

- 7.1 We understand that amounts paid under these arrangements will impact the awards of universal credit claimants. However, individuals might not understand the need to report the payments to the Department for Work and Pensions (DWP) so that their award is adjusted accordingly. Equivalent notification in Northern Ireland would be to the Department for Communities (DfC). HMRC must therefore pass the relevant information to DWP/DfC in the same way that HMRC share other earnings data, gathered via the Pay As You Earn real-time information system (RTI).

- 7.2 We propose the following amendment to seek confirmation of this:

On page 18, after line 33, insert—

“The arrangements must include a procedure for the Commissioners to notify the Department for Work and Pensions, or the Department for Communities where the individual resides in Northern Ireland, of payments made under this section where an individual is also a claimant of universal credit or other means-tested benefits.”

*Explanatory statement: This amendment requires HMRC to tell the DWP/DfC of payments made under the new section 193A FA2004 where the recipient is a claimant of a means-tested benefit.*

## 8 Implementation/backdating

- 8.1 Non-taxpayers have been affected by this issue for many years, and in increasing numbers since the personal allowance for income tax first exceeded the pensions automatic enrolment threshold in 2015/16<sup>1</sup>. It is therefore disappointing that implementation of this solution is delayed until 2025/26 – a decade later, with the first payments then being made in respect of the 2024/25 tax year. When HMRC have put the system in place to marry up individuals’ data and calculate payments due under

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<sup>1</sup> The auto-enrolment threshold is set at earnings of £10,000 a year. The personal allowance first exceeded this in 2015/16 when it was set at £10,600 and it has now increased to £12,570.

the proposed section 193A, we believe that it should be possible to run such a reconciliation for years prior to 2024/25.

- 8.2 While individuals may not have to ‘claim’ a repayment as such, HMRC’s intention is that those for whom they calculate a payment is due will have to provide bank details via a digital channel for the payments to be made.<sup>1</sup> We understand from the figures for Exchequer impact<sup>2</sup> that HMRC are not anticipating full take up of such invitations, so are operating on the assumption that some people entitled to this relief will lose out on it.
- 8.3 The policy costings<sup>3</sup> indicate that in 2025/26 (when payments will be made in respect of the 2024/25 tax year), the cost will be £10million. We do not know what the exact figures will be for 2024/25, but the usual maximum payment to a person under the new section 193A FA2004 for 2023/24 will be £63.30.<sup>4</sup> If we assumed a mid-point average payment of £31.65 for each of the estimated 1.2million eligible population, this would give a cost of nearly £38million.
- 8.4 We are extremely concerned that the estimated figures indicate a very low anticipated take-up, with only approximately a quarter of the eligible population receiving their payment. In our view this shows a lamentable lack of ambition from the government. As well as an effective awareness-raising campaign (see below), we suggest that the offer of an initial payment for at least two tax years could encourage more people to respond to HMRC’s invitation.
- 8.5 We therefore propose backdating for a further year, via the following proposed amendment:

On page 19, after line 2, insert—

“The Treasury must make regulations to treat the tax year 2023-24 as a relevant tax year under this section and for initial payments to individuals to include a backdated payment of appropriate amounts for that tax year.”

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<sup>1</sup> See HMRC Tax information and impact note, 15 March 2023:

<https://www.gov.uk/government/publications/pensions-relief-relating-to-net-pay-arrangements/relief-relating-to-net-pay-arrangements>

<sup>2</sup> See HMRC Tax information and impact note, 15 March 2023:

<https://www.gov.uk/government/publications/pensions-relief-relating-to-net-pay-arrangements/relief-relating-to-net-pay-arrangements>

<sup>3</sup> See Autumn Budget and Spending Review 2021, page 39, which describes uncertainty over take-up:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1029980/Policy\\_Costings\\_Document\\_FINAL.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1029980/Policy_Costings_Document_FINAL.pdf)

<sup>4</sup> The maximum payment is based on someone earning an amount equalling the full personal allowance of £12,570, less the lower qualifying earnings band of £6,240, which means their employee contribution under auto-enrolment rules would be 5% x £6,330 (12,570 – 6,240). Tax relief on that at 20% would be £63.30. An individual could, however, get more than this sum if their pension scheme contributions are calculated on a different basis, such as from the first £1 of earnings and/or using a different employee contribution rate.

*Explanatory statement: This amendment would commence relief under section 25 from tax year 2023/24 rather than only from 2024/25.*

## **9 Awareness**

- 9.1 There would appear to be a significant risk of fraudulent activity surrounding these payments in the same way that scammers target the 31 January deadline and tax year end, inviting unsuspecting members of the public to ‘claim a tax refund’. As noted at paragraph 8.2 above, we understand there will be a digital process for people to obtain their payment, once invited by HMRC to do so. It is vital that the government commits to organising an awareness-raising campaign at the time of implementing these payments, to explain the process to low earners. To ensure maximum reach, this should be done in collaboration with the pensions industry, employers, the payroll industry and third sector representatives.

## **10 About Us**

- 10.1 The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998, LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low-income workers, pensioners, migrants, students, disabled people and carers.
- 10.2 LITRG works extensively with HM Revenue & Customs (HMRC) and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.
- 10.3 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT’s primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.
- 10.4 Since 2018, LITRG has been co-ordinating the ‘Net pay action group’ (NPAG) – a group of pension providers, lawyers, tax specialists, payroll specialists, employers, consumer groups, policy experts and politicians – pressing for this particular issue to be addressed.

LITRG  
5 April 2023