

#90 HR Newsletter

Sept 2016: Tax position for PILON

The Government is planning to change the way notice pay upon termination can be taxed/untaxed

Following the consultation last year on changes to the tax treatment of termination payments, the government has now produced revised proposals.

- All PILON payments will be subject to income tax and NICs as earnings – regardless of whether there is a PILON clause in the contract. The legislation proposes a concept of ‘post-employment notice income’, which would be calculated for the notice period based on the average of the employee’s earnings in the previous 12 weeks. Interestingly, it appears that this is also intended to include ‘expected bonus income’ – this is a point that will need watching as the proposals develop as it could potentially catch payments which wouldn’t ordinarily be thought of as being within a PILON, although of course payments that are actually in respect of bonus should normally be taxed as earnings anyway.
- The £30,000 exemption remains in place for termination payments which aren’t either ‘earnings’ (as currently) or PILON. This continues to apply regardless of the reason for the termination or length of service.
- BUT – NICs are to be payable on the excess over £30,000, whereas currently it is NIC-free (this could be a significant cost for employers on large severance packages, as employer NICs is at the rate of 13.8%).
- The exemptions for disability and legal costs are to remain, but the foreign service exemption is to be abolished (which will be an issue for employees who have worked some of their period of employment overseas).
- Payments in respect of discrimination should not be affected by any of this – if not connected to termination they will remain exempt as currently, and if connected to termination they will still be subject to the usual £30,000 exemption (except NICs as well as income tax will be payable if the total payment when aggregated with other s.401 payments exceeds £30,000).

The changes are not due to come into force until **April 2018**, and things could still change significantly between now and then as it is out to consultation. However, this is one to keep in mind as we move closer to that date