Draft FB 2017 Cl 9: Termination payments

Employment Tax | Personal tax

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LITRG and CIOT have made submissions on the draft Finance Bill 2017 and the draft National Insurance Contributions Bill 2017 clauses in relation to the simplification of the income tax and National Insurance contributions (NIC) treatment of termination payments.

From 2018/2019 onwards the scope of the exemption for termination payments will be narrowed so that non-contractual payments in lieu of notice (PILONs) will be taxable (to the extent they equate to an individual's basic pay), Foreign Service Relief (FSR) will be abolished (save for seafarers), all PILONs will be subject to Class 1 NICs and employers will be liable to pay employer NICs on the amount of a termination payment that exceeds the £30,000 income tax exemption. In addition, the changes clarify that the exemption for injury payments does not apply in cases of injured feelings.

LITRG and CIOT have broadly welcomed the approach adopted in respect of termination payments, in particular the retention of the £30,000 exemption for eligible termination payments and the fact that employees, already in a vulnerable position due to losing their job, will continue not to have an NIC liability on their termination payment.

Nevertheless, LITRG does sound a note of caution that employers may reduce termination packages to compensate for the additional cost of paying employer's NIC on termination payments in excess of £30,000. We accept that this will be mitigated in most low-income cases by the fact that the exemption is being maintained at £30,000.

LITRG also asks for confirmation that the provisions will not result in termination payments (that are eligible for the £30,000 exemption) falling within the income

calculation for student loan repayments. It does not appear that this should be the case, nevertheless, it would provide helpful clarity to those concerned if this could be confirmed.

The CIOT raised concerns that the formula in new ITEPA 2003 s 402D(1) may result in an anomaly where a terminal bonus is received at the same time as a PILON is made. For example, an employee receives a final 'thank you' bonus (i.e. earnings) from their employer plus a non-contractual PILON. If the bonus in this example equals the PILON then the amount of the post-employment notice income' (PENP) given by the formula in new ITEPA 2003 s 402D(1), would appear to be 'nil' and the amount charged as earnings – that is the PENP – would also be nil.

We have asked HMRC to clarify whether this is correct and, if so, whether it is the intended result.

CIOT was also concerned about the interaction of the new FSR on termination awards and the rules normally applied to attribute general earnings between UK and non-UK duties. We are concerned that the net result of these amendments could be to tax a termination award more highly than a 'normal' bonus, and also to tax a termination award where an individual has been an occasional business visitor to the UK. We have asked HMRC to clarify its position in respect of both of the above and include examples in guidance.

The LITRG responses are available on the LITRG website at Draft National Insurance Contributions Bill 2017: Termination awards and Draft Finance Bill 2017: Termination payments.

The CIOT response is available on the CIOT website.