

Employment tax reforms

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What will we cover?

- Termination Payments reforms ([AB 643](#))
- Salary sacrifice reforms ([AB 643](#))
- IR35 rules: public sector changes ([AB 643](#))
- All contained in Finance Bill 2017 and National Insurance Contributions Bill 2017

Termination Payments Reforms

- Expected April 2018
 - Designed to align the income tax and Secondary National Insurance Contributions (Employer NICs) treatment of termination payments
 - Clarify exemptions for termination payments
 - Separate earnings from termination payments
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Termination Payment

- £30,000 exemption for many years
 - Do we:
 - Increase £30,000 in line with inflation
 - Reduce amount to £1,000 per year of service
 - Conclusion: Neither
 - Keep £30,000 exemption (tax paid above that)
 - Employer pays NICs on amounts above £30,000 too
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Pay in Lieu of Notice (PILON) Now

- Could be:
 - Contractual (taxable)
 - Non-contractual i.e. compensation for breach of contract (not taxable)
 - Non-contractual, but a regular policy response (in eyes of HMRC taxable)
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Pay in Lieu of Notice (PILON) 2018

- All taxable and subject to Class1 (Employee NICs)
 - Works notice – normal approach
 - PILON – employer must identify amount of basic pay employee would have received if they had worked the notice period
 - This amount is earnings i.e. not part of £30,000 exemption
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Example: Calculating Post employment notice pay

- Annual salary = £100,000
 - 3 month notice period (90 days)
 - Employment is terminated without notice.
 - Termination payment of £30,000.
 - $£100,000 \times 90 / 365 = £24,657$.
 - So £24,657 is treated as earnings and the balance is taxable as a termination payment.
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Summary: Notice and £30,000 exemption

	Notice Pay	Up to £30,000	Over £30,000
Tax	✓	✗	✓
Employee NICs	✓	✗	✗
Employer NICs	✓	✗	✓

BiK salary sacrifice restrictions

- Restrictions to tax advantages for BiKs provided through salary sacrifice
- No changes to:
 - Childcare vouchers/workplace nurseries, Cycle to Work, employer pension contributions, ultra low emission cars
- Changes due April 2017, or April 2018 for deals in place before then, April 2021 for cars, accommodation, school fees

Phone contract cost: £700	Basic	Higher	Additional
Employee reduces gross salary by	£700	£700	£700
Cost to employee (reduction in net pay)	£476	£406	£371
Employee saves*	£224, 32%	£294, 42%	£329, 47%
Employer saves**	£97, 13.8%	£97, 13.8%	£97, 13.8%
Cost to Exchequer	£321	£391	£426

* The employee's income tax and Class 1 NICs

** The employer's NICs

BiK salary sacrifice restrictions

- Tax advantages removed
- Employer can still provide BiK through salary sacrifice but BiK will be valued as the higher of the salary sacrificed or the £ equivalent value set out in Part 3, The Benefits Code ITEPA
- Issues: employees lose tax advantages, employers lose NIC advantages, which currently pay for admin of scheme and more

BiK salary sacrifice restrictions

- Impacts
 - Their use shores up the overall reward package at minimal cost
 - Recruitment/retention/employee resentment
 - Increase salary to compensate? cost/equal pay issues

Intermediaries IR35

- IR35 rules apply where (1) a person performs services for a client through an intermediary, e.g. a personal service company (PSC); and
- (2) had the arrangements been made directly between the individual and the client the person would be in employment for tax/NIC purposes (the employment status test)
- Consequence: person taxed/NI'd as employee

Intermediaries IR35

- At present responsibility for assessing whether IR35 applies and paying tax falls on intermediary e.g. PSC
- Government believes 90% non compliance

Intermediaries IR35

- Change: for payments from 6 April 2017 where client is public sector body responsibility will fall to public sector body
- If supplied by agency/consultancy firm public body assesses, agency deducts
- Public sector body defined as body listed in Freedom of Information Act 2000: includes local government

Intermediaries IR35

- Key questions
 - Are you a public sector organisation? Yes
 - Worker operate through own company? Yes
 - Worker supplied through an agency? No, go to A, Yes, go to B
- A: IR35 employment status assessment and deduction falls to public sector body
- B: IR35 assessment falls to public body who tells agency result and agency deducts

Intermediaries IR35

- Employment status test: HMRC producing online tool, likely to focus on:
 - Mutuality of obligation
 - Right of substitution
 - Right of control
 - Financial risk
 - Length of engagement
 - Part and parcel of the organisation

Intermediaries IR35

- Where agency involved
- Public sector client must inform agency whether or not IR35 applies
- Agency can request information if not provided or reasons: 31 days to reply
- Two or more agencies in a chain?
 - Provide info to agency you contract with but agency closest to individual/PSC deducts tax/NI

Intermediaries IR35

- Statutory payments etc
 - Apprenticeship levy: fee payer liable (i.e. public body/agency)
 - SSP/SMP etc: Personal Service Company
 - Pension (auto-enrolment): no rights through client or fee payer, rights through PSC as employer
 - ‘Employment rights’ e.g. NMW and redundancy pay: worker has rights through PSC

Intermediaries IR35

- Issues
 - Public/private sector disparity: public sector less attractive as IR35 likely to be applied
 - Increase in rates?
 - Administration and associated costs
 - Direct employment more attractive? Pension, sick pay etc

QUESTIONS?

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