

In the Know....

Government consultations on employee pay



The government has recently released consultations focusing on two different areas of employee pay: termination payments and salary sacrifice schemes.

Consultation on tax free termination payments

What is the current position?

Currently, different rules are applied to termination payments based on whether they are contractual or non-contractual payments. Contractual payments, such as salary or accrued but unused holiday pay, are fully taxable and subject to National Insurance contributions (NICs) whereas the first £30,000 of any non-contractual payment is tax free. Non-contractual payments include redundancy pay and pay in connection to tribunal awards for unfair dismissal. Any non-contractual payments over £30,000 are subject to income tax but not NICs.

Similarly, payment in lieu of notice (PILON) payments where the employee has a contractual right to receive these are taxable whilst non-contractual PILON payments are eligible for the £30,000 tax exemption.

What changes does the consultation propose?

The draft legislation contained in the consultation aims to simplify and provide consistency in the tax status of these payments. The proposals maintain the current £30,000 exemption for non-contractual payments but require employers to pay both tax and NICs on these payments above £30,000.

To simplify PILON payments, the proposed changes make all PILON amounts taxable, whether or not there is a contractual right to receive these. The draft legislation is expected to come in to force in April 2018.

Consultation on salary sacrifice for the provision of benefits in kind

What is the current position?

Salary sacrifice arrangements normally cover scenarios where the employee agrees to amend their contractual entitlements and give up part of their salary in return for a non-cash benefit in kind. Salary sacrifice arrangements are often seen as a useful tool for rewarding staff but cannot be used to take pay below National Minimum Wage or

National Living Wage.

Salary sacrifice schemes can be used to provide benefits including:

- Employer pension contributions
- Employer-supported childcare
- Providing cycles and cyclist safety equipment
- Cars
- Assets such as mobile phones, computers and white goods

Once the salary is given up, the amount of sacrificed salary is not chargeable to income tax or liable for employee or employer NICs. This not only creates a tax advantage for employers, leading to an increase in these arrangements existing, but also creates a significant cost to the Exchequer. The government has produced a consultation to limit the range of benefits that attract tax and National Insurance advantages when provided under a salary sacrifice scheme.

What changes does the consultation propose?

The proposed changes to tax legislation will mean that where a benefit in kind is provided through a salary sacrifice scheme, it will be chargeable to income tax and Class 1A employer NICs at the greater amount of: the amount of salary sacrificed; and, the cash equivalent set out in statute if there is one. This means that where the normal taxable value of the benefit in kind is higher than the amount of salary sacrificed, the benefit in kind will be subject to tax and NICs in the normal way. These proposals do not effect employer pension contributions, employer-supported childcare or cycle to work schemes.

The government is intending to introduce these changes through legislation in the Finance Bill 2017, taking effect from 6 April 2017.

The content of this briefing is correct at the time of publishing.

PLEASE CONTACT THE 24 HOUR ADVICE SERVICE FOR ADVICE ON YOUR SPECIFIC SITUATION BEFORE ACTING ON THE INFORMATION IN THIS PUBLICATION.