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# GMS Flash Alert


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# United Kingdom – HMRC Clarifies New Termination Payment Rules

HM Revenue & Customs (HMRC) has confirmed its interpretation of the commencement provisions for the new U.K. rules on non-contractual pay in lieu of notice.

There had been some uncertainty about the tax authorities' position concerning payments received during 2018/19 as a result of a termination occurring in 2017/18.[1]

## WHY THIS MATTERS

The above-mentioned uncertainty has now been clarified. The position of the tax authorities is such that payments made in 2018/19 pursuant to a termination which occurred in 2017/18 will remain subject to the "old" rules, i.e., non-contractual pay in lieu of notice may be exempt from tax (within the generally applicable £30,000 limit), where such payments form part of a termination settlement.

This should be welcome news as it may result in tax savings for taxpayers, and administrative relief (and certainty) for employers.

## More Details

Finance (No.2) Act 2017 introduced new rules governing non-contractual pay in lieu of notice (PILON). (For prior coverage of the changes to the tax treatment of termination payments, see the following issues of GMS *Flash Alert*: 2017-175 (22 November 2017) and 2017-048 (9 March 2017).) Broadly, these new rules are designed to help ensure that non-contractual PILONs are not exempt from tax (within the generally applicable £30,000 limit) to the extent that they represent "basic pay" that would have been received had the notice been worked (what the legislation refers to as

"post-employment notice pay" or "PENP"). Instead the new rules subject this PENP to income tax and National Insurance contributions (NIC).

The changes are due to take effect from 6 April 2018 (i.e., for the 2018/19 tax year). However, what was not immediately clear was the position of payments received during 2018/19 as a result of a termination occurring in 2017/18.

In correspondence with KPMG LLP (U.K.), HMRC has now confirmed its view that the new rules apply to termination payments made on or after 6 April 2018, only if the employment ended on or after 6 April 2018.[1] As such, payments made in 2018/19 pursuant to a termination that occurred in 2017/18 will remain subject to the "old" rules, i.e., non-contractual PILONs may be subject to the £30,000 exemption in full, where such payments form part of a termination settlement.

## KPMG LLP (U.K.) NOTE

We understand that this point, as well as further details, will be included in guidance to be published shortly by HMRC. Of course, non-contractual PILONs have been subject to HMRC challenge over the years on various grounds such as custom, habit, practice, or expectation. HMRC's argument has been that certain PILONs have the character of earnings and should be taxable as such. As a result, notwithstanding HMRC's confirmation above, advice should still be sought for termination payments being made both pre- and post-6 April 2018.

## FOOTNOTE:

1 The confirmation was received by means of an e-mail communication on 1 February 2018 between KPMG LLP (U.K.) and the relevant HMRC policy lead for this measure.

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## RELATED RESOURCE

This article is excerpted, with permission, from "New Termination Payment Rules: Start Date Confirmed"(2 February 2018), a publication of the KPMG International member firm in the United Kingdom.

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