

**Termination awards: draft clauses 2016**  
**Consultation on draft clauses for National Insurance Contributions Bill 2017**  
**Response from the Low Incomes Tax Reform Group (LITRG)**

**1 Executive Summary**

- 1.1 We welcome the opportunity to comment on the draft clauses for the National Insurance Contributions Bill 2017 in relation to termination awards. LITRG previously responded to the consultation on the simplification of the tax and National Insurance contributions (NIC) treatment of termination payments in 2015<sup>1</sup> and submitted comments on the initial draft legislation in October 2016.<sup>2</sup>
- 1.2 This consultation response should be read in conjunction with our response to the consultation on the draft clauses for the Finance Bill 2017 in relation to termination payments.<sup>3</sup>

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<sup>1</sup> <http://www.litrg.org.uk/latest-news/submissions/151014-simplification-tax-and-national-insurance-treatment-termination>.

<sup>2</sup> <http://www.litrg.org.uk/latest-news/submissions/161004-simplification-tax-and-national-insurance-treatment-termination>.

<sup>3</sup> The LITRG response in relation to clauses 7, 8 and 9 of Finance Bill 2017 has been submitted to [employmentincome.policy@hmrc.gsi.gov.uk](mailto:employmentincome.policy@hmrc.gsi.gov.uk).

- 1.3 The proposals on termination payments were originally brought forward under the banner of fairness and simplicity. We think therefore that the changes ought not to result in a less favourable outcome for low-income individuals.
- 1.4 We welcome 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.

## **2 About Us**

- 2.1 The LITRG is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998 LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low income workers, pensioners, migrants, students, disabled people and carers.
- 2.2 LITRG works extensively with HM Revenue & Customs (HMRC) and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.
- 2.3 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

## **3 General comments**

- 3.1 The government proposes that from April 2018 termination payments in excess of £30,000 will be subject to employer's NIC.
- 3.2 We welcome the fact that termination payments in excess of £30,000 will continue to be exempt from employee NIC, as this will help to protect employees who are already in a vulnerable position due to losing their job.
- 3.3 Given that the threshold of £30,000 has been steady at that level since 1988, we would strongly recommend that provision is included to regularly review the level, in order to assess whether it should be updated.
- 3.4 We continue to have a concern 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. Termination settlements for lower

earners could also be depressed however, as a result of the employer having to pay employer's NIC on settlements for higher earners.

- 3.5 Some employers may be confused by employer's (Class 1A), but not employee, NIC applying to Section 401 termination payments over the £30,000 exemption.
- 3.6 We would welcome 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. According to The Education (Student Loans) (Repayment) Regulations 2009,<sup>4</sup> earnings for the purpose of student loan repayments are "such sums as—
- (d) constitute earnings for the purposes of section 3 of the Social Security Contributions and Benefits Act 1992 as calculated for the purposes of the Contributions Regulations as amended from time to time; and
  - (e) are to be taken into account for the purposes of calculating secondary Class 1 contributions under section 9 of the Social Security Contributions and Benefits Act 1992;"

We would not expect this to result in an additional student loan repayment, since the provisions create a liability to Class 1A NIC for employers, which is dealt with by section 10, rather than section 9, of the Social Security Contributions and Benefits Act 1992. Nevertheless it would be helpful to receive confirmation that our understanding is correct.

- 3.7 We would also welcome confirmation that such eligible termination payments do not have to be included in the calculation of total income for the purposes of student loan repayments for individuals who have to complete a tax return.<sup>5</sup> Again, we would not expect this to result, but it would be helpful to receive confirmation that our understanding is correct.
- 3.8 For the avoidance of doubt, we do not think termination payments that are eligible for the £30,000 exemption should fall within the student loan repayment regime. This means that termination payments on which no employee NIC liability arises would remain outside the student loan repayment regime. As a result of the Finance Bill 2017 clauses, certain payments, such as all payments in lieu of notice, will be subject to tax and NIC as earnings. We accept that payments that are treated as earnings will come within the income calculation for student loan repayments.
- 3.9 Given the different rules for student loans in England, Scotland, Wales and Northern Ireland, the fact that there are new postgraduate loans being introduced, and that there are proposals for the introduction of further loans, we think it might be helpful to provide further clarification on this and consider whether any amendments are required to the

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<sup>4</sup> Regulation 41, The Education (Student Loans) (Repayment) Regulations 2009.

<sup>5</sup> Regulation 29, The Education (Student Loans) (Repayment) Regulations 2009.

legislation to ensure that eligible termination payments remain outside the student loan regime.

#### **4 Comments on draft legislation**

4.1 We have no comments on the draft legislation.

LITRG  
27 January 2017