

**GUIDANCE NOTE**

**Settlement Agreements**

**March 2018**

From 6 April 2018 a new regime applies to the treatment of notice monies paid on termination of employment.

For ease:-

1. This note is a broad summary only. It assumes that the termination date of employment and payment date of compensation both fall on or after 6 April 2018.
2. The notice pay element of a compensation payment can no longer be paid free of tax and National Insurance. Instead an employer needs to work out how much of the payment relates to the notice required to be paid by the employer under the employment contract, or the balance of any notice payable if some notice has been or is being worked. This notice pay element is called Post-Employment Notice Pay (PENP).
3. So, if notice is worked in full then there is no PENP. If no notice is worked then PENP is “basic pay” for the contractual notice period that the employer needs to give. If some notice is worked then PENP is “basic pay” for the unworked notice period.
4. The calculation of PENP differs depending on a number of factors. Essentially it is linked to what is termed “basic pay”. Basic pay is employment income including salary sacrifice sums but disregarding overtime, bonuses, commissions, gratuities, allowances, benefits in kind, amounts treated as earning, termination awards, amounts that count as employment income (such as share-based employment income) and employment-related securities that constitute Section 62 earnings.
5. If an employment contract incorporates a PILON clause it may cancel out PENP, but we will be happy to advise if this is the case or not.
6. After payment of PENP then:-
  - any further payment up to £30,000.00 (including Statutory Redundancy Pay) can be paid tax free; and
  - any payment thereafter over £30,000.00 is subject to Income Tax but not National Insurance, employers or employees. From April 2019 it is proposed that employers’ National Insurance will be payable.

*The comments in this Guidance Note are of a general nature only. Full advice should be sought on any specific problems or issues.*