ICAS response to the HMRC consultation document
‘Simplification of the Tax and National Insurance Treatment of Termination Payments’

14 October 2015
About ICAS

1. The Institute of Chartered Accountants of Scotland (“ICAS”) is the oldest professional body of accountants. We represent around 20,000 members who advise and lead businesses. Around half our members are based in Scotland, the other half work in the rest of the UK and in almost 100 countries around the world. Nearly two thirds of our members work in business, whilst a third work in accountancy practices. ICAS members play leading roles in around 80% of FTSE 100 companies. ICAS is also a public interest body.

General Comments

2. ICAS welcomes the opportunity to comment on the consultation document ‘Simplification of the Tax and National Insurance Treatment of Termination Payments’, issued by HMRC on 24 July 2015.

3. ICAS supports the Government’s aim to create a regime that is easy for employers to administer and for employees to understand.

Specific questions

Q1 Do you agree that the distinction between contractual and non-contractual termination payments should be removed? Please provide reasons for your answer.

4. Yes, as part of the introduction of a new tax regime for termination payments. The Office of Tax Simplification (OTS) identified this as a key complexity under the current rules.

Q2 Do you agree that removing the different tax and NICs treatment of different types of PILONs will help remove complexity for termination payments? Please provide reasons.

5. Yes, as part of the introduction of a new tax regime for termination payments. Again the OTS identified this as a key complexity under the current rules. Treating all PILONs in the same way would be a simplification.

Q3 Do you think that the income tax and NICs treatment of termination payments should be aligned? Please provide reasons.

6. Yes; there is no logical reason for the different treatment. This would be a simplification. However the addition of employers’ NIC to payments may cause problems for businesses which are in financial difficulties. It may also lead to a reduction in the amount paid by some employers as non-statutory redundancy payments because they will adjust the amounts paid to allow for the employers’ NIC.

Q4 Do you think that aligning the income tax and NICs treatment of termination payments will make termination payments easier to administer and easier to understand? Please provide reasons for your answer.

7. Yes. Employers will not have to operate different rules so this will make payments easier to administer.

Q5 The government would like to explore what level the threshold for the termination payment tax and NICs exemption should be set and would welcome views. Please provide reasons for your answer.

8. As a matter of policy ICAS would not give an opinion on the threshold which should be set.

Q6 Do you agree that a relief based on length of service and those who are being made redundant would be easier for employers to administer? Please provide your reasons.

9. Yes in some cases. As the OTS noted, statutory redundancy is a well-understood concept so linking payments to redundancy, as defined in s139 Employment Rights Act
1996, would make sense. Many employers making employees redundant will need to calculate length of service in order to calculate statutory redundancy payments. The information should therefore already be available. However, basing the relief on length of service would mean that employers would have to calculate a different exempt amount for each employee, rather than using a standard figure, which introduces some complexity.

Q7 Do you think that structuring the relief based on length of service and redundancy will be easier for employees to understand? Please provide reasons.

10. Again it is likely that in some cases employees would find it easier to understand because of the link to redundancy and because the calculation of statutory redundancy payments is already linked to length of service. However the replacement of a well-known standard figure (albeit often misunderstood) with an individual limit would need publicity and explanation.

Q8 Are there any alternative ways that the income tax and NICs exemption could be structured that would better meet the government’s stated aims as set out at 3.5 of this document. Please provide details with your answer.

11. The OTS suggested an exemption linked to a multiple of statutory redundancy payments. For employers who already have to calculate statutory redundancy payments this would be relatively simple and it has other advantages identified by the OTS and noted by the Government. We understand the Government’s reasons for not adopting this approach, in particular the groups which are not entitled to statutory redundancy, but we wonder if there might be some merit in exploring this option further to see whether it could be adjusted to provide a simpler solution than the current proposals.

Q9 Are there any alternative approaches that you can think of that will prevent this payment of salary being disguised as a termination payment? Please provide details with your answer.

12. The suggestion in para 4.24 that relief will not be available where “the custom or agreement is that the employment will end after a fixed period of time” would introduce complexity into the system; rather like the uncertainty caused by similar arguments about PILONs.

13. Para 4.26 tackles the position where the employee is re-engaged to do a similar job for the same company or associated company within a 12 month period. However it leaves open possible opportunities for exploiting the rules where, for example, an employee is made redundant and immediately taken on as a self-employed contractor carrying out essentially the same work.

Q10 Please can you provide details of the types of payments and people who receive termination payment who would be affected by the anti-avoidance provisions? Please also state which anti-avoidance provision you are referring to.

14. We have no evidence on which to base any comments.

Q11 Do you think that the exemption for injury or disability should be maintained? Please provide reasons for your answer.

15. Yes, subject to the OTS comments on problems with this exemption being addressed. It is important to support employees who have been injured or become disabled and may find it harder to find other employment.

Q12 Do you agree that by removing the requirement to differentiate between the different elements of payments made in connection with injury or disability will provide simplification? Please provide reasons for your answer.

16. It is unclear precisely how this is intended to operate and see the answer to Q11.
Q13 Do you think that there should be a cap on the amount of tax and NICs relief that is provided where the payment is connected with injury or disability? If so please provide reasons and suggested amounts.

17. No. Any substantial payments falling into this category are likely to be received by those who may have considerable difficulty in finding alternative employment.

Q14 Do you think that the foreign service exemption should be removed? Please provide reasons for your answer.

18. The foreign service exemption gives rise to considerable complexity so its removal would be a simplification. However the OTS notes that the fairness of removing this exemption would need to be explored further and we do not have any evidence on which to base any comments on this aspect.

Q15 Do you think any of the other exemptions should be maintained? If so which ones? Please provide reasons for your answer.

19. Para 4.36 states that there is some concern that the exemption in respect of legal costs is used to pay for legal advice with the sole purpose of reducing tax and NICs liability for employees and employers. In some cases this may be one purpose but it is unlikely to be the only or main purpose in many cases. Many employers use settlement agreements (previously known as compromise agreements) and therefore pay for employees to take legal advice before signing these. Removing the exemption would therefore cause difficulties.

20. We also believe that the exemption for Outplacement Counselling in s310 ITEPA 2003 should be retained. Outplacement counselling can be of considerable assistance in helping employees to find alternative roles, particularly if they have been with an employer for a long time and have no recent experience in the jobs market. Removing the exemption would be likely to reduce the provision of counselling.

Q16 Do you agree that any payments that would usually be exempt from income tax and NICs should remain exempt (subject to the usual rules) when made as termination payments? Please provide reasons for your answer.

21. Yes. Payments into pension schemes are specifically referred to in para 4.37 and we believe that these should remain exempt to assist employees in saving sufficient money for their retirement: the introduction of the annual and lifetime allowances have reduced the scope for any abuse in this area.

Q17 Do you think that there should be a financial cap, above which income tax (and possibly NICs) should be payable in cases of unfair or wrongful dismissal? Please provide reasons for your answer.

22. We agree that there is a strong case for exempting these payments. In order to comment on the possibility of a cap it would be helpful to have evidence on the average amounts of these payments and how many would be likely to exceed the exemption for redundancy payments (which will of course depend on the amount selected).

Q18 Do you think that that should be any differentiation in terms of a financial cap where payments have been settled by a tribunal or an arrangement between an employee and employer? Please provide reasons for your answer.

23. It is hard to see any logical reason for distinguishing between the two. Where there are arrangements between employer and employee there could potentially be scope for avoidance but we have no evidence on this point. However if a different treatment applied it could mean that cases would be more likely to go to tribunal which would increase costs and other burdens for both employers and employees.
Q19 Do you think that there should be a financial cap, above which income tax (and possibly NICs) should be payable in cases of discrimination? Please provide reasons for your answer.

24. See answer to Q17 above.

Q20 Do you think that there should be any differentiation in terms of a financial cap where payments have been settled by a tribunal or an arrangement between an employee and employer? Please provide reasons for your answer.

25. See answer to Q18 above.