

ALLEN & OVERY



Working out post-employment notice pay (“PENP”) – steps and examples

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Step 1: What is the “relevant termination award”?

The **RTA** (“relevant termination award”) is any payment or benefit to compensate for the termination of employment. It excludes statutory redundancy pay (and approved contractual payments not exceeding statutory redundancy pay), and payments or benefits otherwise taxed as earnings (eg. contractual PILONs or payments for restrictive covenants). The PENP rules apply to RTAs received on or after 6 April 2018 where employment ends on or after that date.

Step 2: How do you calculate PENP?

$$\text{PENP} = ((\text{BP} \times \text{D})/\text{P}) - \text{T}$$

Where:

- **BP** is the employee’s basic pay in the last pay period (week or month) which ends prior to the date on which notice is given, or, if no notice is given, the termination date. Pre-salary sacrifice salary must be used. Bonuses, commission, allowances and benefits are disregarded, but note that these may still need to be factored into severance calculations.
- **D** is the number of days, or months where the employee is paid monthly and has notice expressed in whole months, in the “post-employment notice period” (the period from the last day of employment to the date when the notice period would have expired if given in full).
- **P** is the number of days in the last pay period or, where the employee is paid monthly and has notice expressed in whole months, $P = 1$ (ie. formula is simply $(\text{BP} \times \text{D}) - \text{T}$).
- **T** are amounts (other than holiday pay and termination bonuses) that are paid on termination but are already taxable as earnings (e.g. contractual PILONs).

Step 3: What amount must be taxed as earnings?

- If PENP is greater than, or equal to, the RTA, the entire RTA is taxed.
- If PENP is less than the RTA but is not nil, the PENP is taxed.
- If PENP is a negative amount, it is treated as nil.

Check Part 6, Chapter 3 of the *Income Tax (Earnings and Pensions) Act 2003* for full provisions and [HMRC Employment Income Manual](#) for guidance.

Example 1:

Sue, paid monthly – non-contractual PILON

$$\text{PENP} = (\text{BP} \times \text{D}) - \text{T}$$

1. Sue earns monthly basic pay of £4,000 and has a six-month notice period.
2. She has no contractual PILON and works one month of her six-month notice period.
3. She receives a termination award of £30,000, of which £8,000 is a statutory redundancy payment.

STEP 1: WHAT IS THE RELEVANT TERMINATION AWARD?

The RTA is £30,000 less statutory redundancy pay (£8,000) = £22,000

STEP 2: HOW DO YOU CALCULATE PENP?

$$\text{PENP} = \text{BP} (£4,000) \times \text{D} (5) - \text{T} (\text{nil}) = £20,000$$

$$\text{PENP} = £20,000$$

STEP 3: WHAT AMOUNT MUST BE TAXED AS EARNINGS?

As PENP is less than the RTA, the PENP (£20,000) is subject to income tax and class 1 NICs.

The remaining £10,000 of the termination award, which includes statutory redundancy pay, may be paid tax-free and is NICs-exempt.

Example 2:

Bob, paid weekly – contractual PILON

$$\text{PENP} = ((\text{BP} \times \text{D})/\text{P}) - \text{T}$$

1. Bob earns weekly basic pay of £1,000 and has a four-week notice period.
2. He has a contractual PILON and works one week of his four-week notice period.
3. He receives a termination payment of £5,000, which includes a £3,000 contractual PILON representing three weeks' basic pay, with the balance being *ex gratia*.

STEP 1: WHAT IS THE RELEVANT TERMINATION AWARD?

The RTA is the £2,000 *ex gratia* sum (contractual PILON is disregarded).

STEP 2: HOW DO YOU CALCULATE PENP?

$$\text{PENP} = (\text{BP} (\text{£}1,000) \times \text{D} (21)/\text{P} (7)) - \text{T} (\text{£}3,000) = \text{£}0$$

$$\text{PENP} = \text{Nil}$$

STEP 3: WHAT AMOUNT MUST BE TAXED AS EARNINGS?

The contractual PILON is already subject to income tax and class 1 NICs. There is no excess tax to pay on this.

The RTA (£2000) may be paid tax-free and is NICs-exempt.

Example 3:

Sally, paid monthly – salary sacrifice and contractual PILON

$$\text{PENP} = (\text{BP} \times \text{D}) - \text{T}$$

1. Sally earns monthly basic pay of £8,000 and has a three-month notice period.
2. She participates in a salary sacrifice arrangement sacrificing £1,000 each month.
3. She has a contractual PILON and is paid a PILON of £24,000 representing three months' basic pay plus an additional £10,000 *ex gratia* sum.

STEP 1: WHAT IS THE RELEVANT TERMINATION AWARD?

The RTA is the £10,000 *ex gratia* sum (contractual PILON is disregarded).

STEP 2: HOW DO YOU CALCULATE PENP?

BP is increased from £8,000 to £9,000 to take account of sacrificed salary.

$$\text{PENP} = (\text{BP} (\text{£}9,000) \times \text{D} (3)) - \text{T} (\text{£}24,000) = \text{£}3,000$$

$$\text{PENP} = \text{£}3,000$$

STEP 3: WHAT AMOUNT MUST BE TAXED AS EARNINGS?

As PENP (£3,000) is less than the RTA, this amount is subject to tax and class 1 NICs, as is the contractual PILON that is already taxed as earnings.

The remaining £7,000 of the RTA may be paid tax-free and is NICs-exempt.

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