

# When €15,000 is worth more than €20,000 in Unfair Dismissal cases?



The idea that €15,000 could be worth more than €20,000 may seem like a strange comment. Richard Grogan however, explains that when dealing with unfair dismissal cases - this is the reality

I know solicitors hate the word "tax" and dislike numbers. However, to explain the point in the heading of this article, unfortunately, some numbers are needed and tax must be addressed.

In unfair dismissal cases any award is fully taxable. This comes as a surprise to some. There is no exemption. Even where the award is stated to be made as "compensation" the exemption in Section 192 A TCA 97' does not apply because Section 123 TCA 97' applies. In unfair dismissal cases the legislation in Section 7 when it comes to compensation, provides that this will be the financial loss not exceeding 104 weeks remuneration. Section 17 of the Unfair Dismissals Act, 1977 then refers to the relevant statutory instruments being in this case S.I. 287 of 1977 which throughout, refers to remuneration. Therefore, when you go back to Section 123 of the Taxes Consolidation Act any such award is remuneration and is taxable.

I have set out below a schedule which shows what happens where there is an award of €20,000 as opposed to a settlement of €15,000.

You will see from that calculation that a settlement of €15,000 is one where the employer and the employee are better off. I think it is important that I explain how this is arrived at.

Where there is a settlement the employee can claim a tax termination exemption of €10,160. In addition, the employee can claim a sum of €765 for each completed year of service. In certain circumstances an additional €10,000 can be obtained free of tax.

In addition where there is a settlement, if any part

of the settlement is set out as legal fees, then that element is excluded from any tax calculation. There is no USC. It makes absolute economic sense for those representing employees to seriously consider settlements.

There are advantages for the employer also as the employer does not have to pay employer's PRSI on a settlement.

There is one area where I would express extreme caution for colleagues and that is where an exemption under Standard Capital Superannuation Benefit (SCSB) is being made. It is outside the remit of this article to go into the issue of SCSB but what I would say is that it is possible for an employee to obtain up to €200,000 tax free under that system. It is up to that figure, it is not an exemption in itself. However, specific tax advice must always be obtained particularly where the employee has a contributory pension scheme as the tax benefit they are receiving now will automatically be reduced when they get to retirement age by the amount of the benefit they now receive. For some employees this will not be an issue. For others it will most definitely be an issue.

It is important that colleagues get appropriate tax advice in relation to cases and are aware of tax consequences. If you reject an offer of €15,000 and obtain an award of €20,000 for your client and suddenly find that instead of the employee getting €20,000 that a cheque for a little over €11,000 comes to your office there can be a lot of explaining to do.

I know colleagues will say that they are not tax advisors. If you do not understand the tax issues

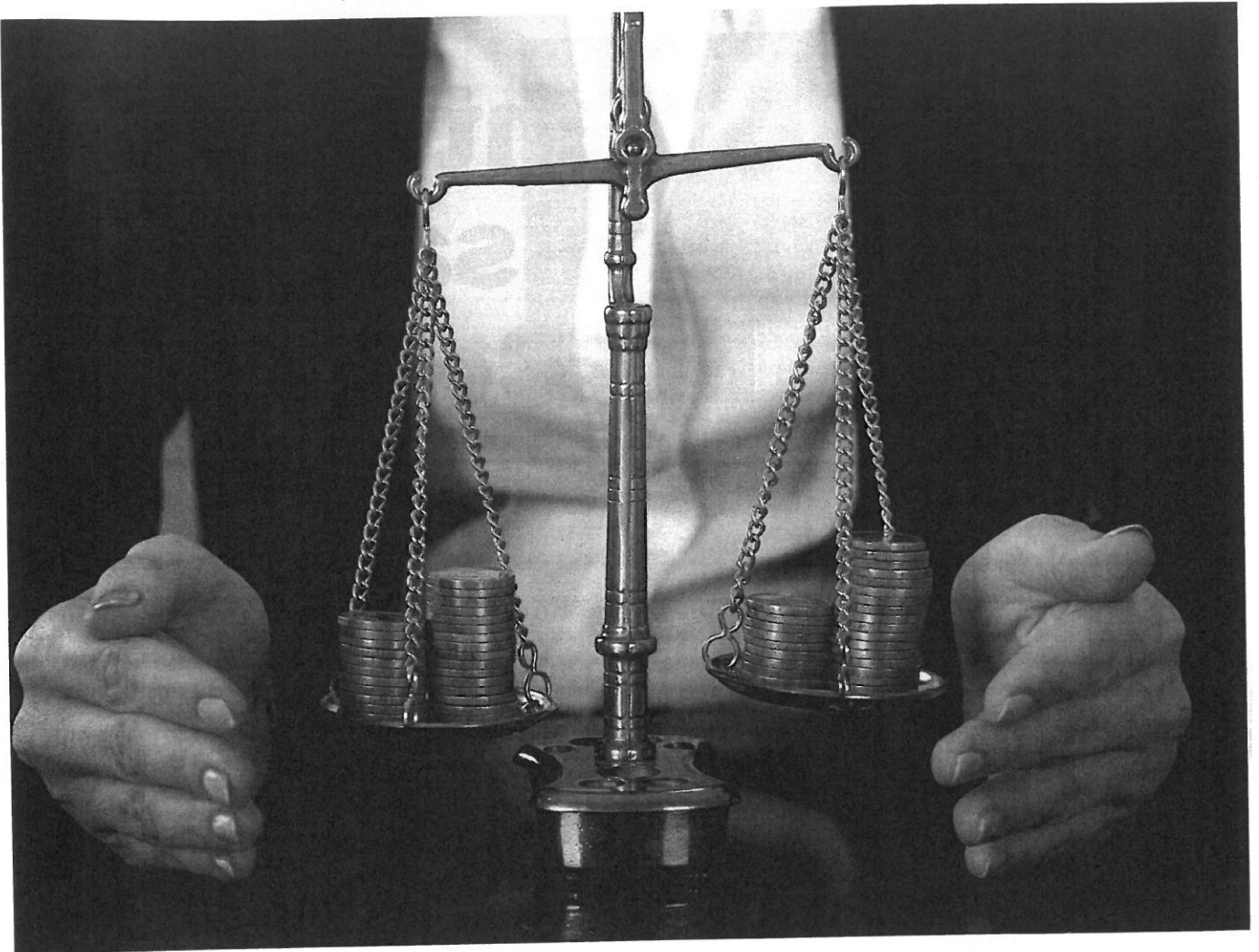
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## Employment Law



relating to employment law cases then it is important that you ensure that your client gets appropriate tax advice, and before any settlement is put in place or a case is run that you both understand the tax consequences of settling or fighting a case. This applies to employer representatives also. If you act for an employer and an award of €20,000 is made and you arrange for that full €20,000 to be paid to the employee then on a subsequent Revenue audit, for up to six years afterwards, the employer can be caught with tax on a grossed-up figure together with employer's PRSI along with interest and penalties.

Unfortunately, tax is a minefield of problems for those involved in employment law cases. Different considerations apply for different taxes but this article is solely dealing with unfair dismissal cases as they are the ones that colleagues will most often come across. Claims under other acts may be tax free but not all and not in unfair dismissal.

All I can advise is that colleagues are careful. That they make sure that if they do not understand the tax they make sure that they get appropriate tax advice. That will be a cost but it is less of a cost than having a situation subsequently arise where a problem arises whether you act for employers or employees.

In a case which results in an award where the employee receives an award of €20,000 the result is:

<b>Employer</b>	
Award	€20,000
PRSI	€2,100
Cost	€22,100

<b>Employee</b>	
Award	€20,000
Tax and USC	(€9,600)
Receives	€11,400

If the case settles for €15,000 and the employee only has one year's service.

<b>Employer</b>	
Settlement	€15,000
Cost	€15,000

<b>Employee</b>	
Settlement	€15,000
Exemption	(€10,925)
Taxable	€4,075
Tax	(€1,955)
Receives	€13,045

If the solicitor's fees were €4,075 in the case of an award the employee receives €7,325. If there is a settlement the taxable sum is reduced by €4,075 so the employee receives €10,925. ☐