# Withdrawal of extra statutory concessions

Technical note and call for evidence
02 October 2014

**Who should read this document?**

Anyone who may be affected by the withdrawals of certain non-statutory tax reliefs set out at chapter 2. This includes large and small businesses, employers, individuals and the bodies that represent all of the above.

**Making your views heard**

We are keen to gather evidence from those who have relevant data about the potential impact of withdrawal of the tax reliefs detailed in this note. Data on the number and types of users of the tax reliefs, including from any bodies who may have undertaken research in the area or represent significant numbers of those affected, is particularly welcome.

Data is requested by **08 January 2015** to ensure it receives full consideration. However it may be possible to take into account data received after that time.

**Phone enquiries**

Stephanie Allistone on 03000 586496

**Email**

tap@hmrc.gsi.gov.uk

**In writing**

Stephanie Allistone, HM Revenue & Customs, Room 1C/06, Central Policy, 100 Parliament Street, London SW1A 2BQ

**Your details**

Representative groups may wish to give a summary of the people and organisations they represent and, where relevant, how they consulted in reaching their conclusions. You may wish to include contact details for follow-up (e.g. name, phone number, email address).

**Confidentiality**

Information provided in response to this document, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentially can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Revenue and Customs (HMRC).

HMRC will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

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# Introduction

The House of Lords' decision in the *Wilkinson*[1] case clarified the scope of HMRC's administrative discretion to make concessions that depart from the strict statutory position. HMRC is therefore reviewing its concessions. The majority can remain as they are, but some are considered to be beyond the scope of HMRC's discretion. Of these, some can be legislated to preserve their effect; others will need to be withdrawn. This document provides details of 3 extra-statutory concessions that need to be withdrawn as part of the review and gives notice of their withdrawal with effect from 6 April 2016.

This document also sets out HMRC's interim assessment of the potential impact of the withdrawals. Further data to assist HMRC in its assessment is welcome to ensure we fully understand what impact the withdrawals may have. HMRC's impact assessment is set out in chapter 3.

[1] R v HM Commissioners of Inland Revenue ex p Wilkinson [2005] UKHL 30

## Chapter 1 – background

1.1 Extra-statutory concessions (ESCs) have been a feature of the UK's tax system for decades and will continue to be made and withdrawn as necessary. For this purpose the term 'extra-statutory concession' refers to any stated concession that departs from the statutory tax treatment. It is not limited to concessions published in the former Inland Revenue booklet IR1[2] and the former HM Customs and Excise booklet Notice 48[3].

1.2 The House of Lords' decision in the *Wilkinson* case clarified the scope of HMRC's administrative discretion to make concessions that depart from the strict statutory position.

1.3 In light of that decision, HMRC began reviewing its concessions. Most ESCs can continue in their current form as they are within the scope of HMRC's administrative discretion. Where an existing concession exceeds the scope of HMRC's discretion the effect of the concession will be maintained by giving it statutory effect where it is appropriate to do so. To date six consultations have been published seeking comments on such legislation, and a seventh is published today alongside this technical note.

1.4 Where it is not possible or appropriate to give statutory effect to a concession which exceeds the scope of HMRC's discretion it will need to be withdrawn. HMRC has identified the three concessions detailed in this note as needing to be withdrawn. These concessions relate to income tax and capital gains tax and withdrawal will take effect from 06 April 2016, so allowing at least a full year's notice. A list of the concessions to be withdrawn can be found below, with more details in chapter 2.

1.5 Where an ESC has to be withdrawn, HMRC recognise that taxpayers may have to make adjustments, and will generally offer an appropriate period of notice before the concessionary treatment formally comes to an end. The length of this period may vary between ESCs, but HMRC will aim to allow a period of time that is sufficient for the necessary adjustments to be made. No ESC will be withdrawn retrospectively.

1.6 Chapter 3 sets out HMRC's interim assessment of the potential impact of the withdrawals. Further data to assist HMRC in fully understanding the impact of the withdrawals would be welcome.

1.7 For general queries on HMRC's review of ESCs, please contact Stephanie Allistone. Contact details are provided at page 2 above. For queries related to specific concessions, please use the contact named for each concession, below.

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[2] Former Inland Revenue booklet IR1
[3] Public Notice 48

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[4] EIM means Employment Income Manual (accessible on HMRC website)

## Chapter 2 – extra statutory concessions to be withdrawn

**EIM 03002: Professional remuneration administrative practice**

EIM 03002 is a longstanding concession. Under certain circumstances, it enables an individual to treat their employment income as trading income chargeable to Income Tax (for a sole trader/partnership) or Corporation Tax.

This works by relieving the company or organisation paying the remuneration of the obligation to operate PAYE in respect of relevant payments of employment income.

As far as we are aware Defra were the main users of the EIM 03002 practice. They have recently changed how they engage veterinary practices and amended their own legislation from April 2014 in relation to the use of Official Veterinarians during an animal health crisis. We are in the process of negotiating a new, limited concession with Defra that is within the Commissioners' discretionary powers and this will be published in EIM soon. The relevant Northern Ireland department is aware of the consultation proposals and is currently considering the matters raised.

Given the above, it has been decided to withdraw this administrative practice. The usual employment income rules and benefits code will apply to all such payments from 6 April 2016.

You can find more information about the concessionary treatment by clicking on the following links - EIM03002. Alternatively, you can access the information on HMRC's website at www.hmrc.gov.uk

**Further advice**
If you have any questions about this, please contact Julie Campbell on 03000 586670 (email: julie.campbell1@hmrc.gsi.gov.uk).

## Sports Testimonials

The taxation of income arising from sports testimonials has been a matter for discussion since the 1920s.

HMRC's published guidance at EIM 64120 takes the approach that unless there is a contractual or implicit entitlement to a testimonial, the proceeds are not likely to be taxable payments of general earnings of the individual. It also implies that testimonial proceeds will not usually be taxed where the testimonial has been arranged by an independent committee. We believe there may have been a widespread misunderstanding of this aspect of the guidance so that the existence of a testimonial committee has meant that this income has, in most cases, not been treated as general earnings of the individual.

In addition, the guidance does not reflect the development of tax legislation over time, including the introduction of the benefits code and the more recent rules on disguised remuneration, nor does it reflect the changing nature of testimonials themselves.

It appears that the guidance may have been improperly applied in practice. HMRC considers that it would fall outside the Commissioners' powers to allow this practice to continue. HMRC's view is that testimonial proceeds are primarily derived from the sportsperson's employment, and the sums received should normally be taxable as general earnings. This would bring the tax treatment of such sums in line with other voluntary payments by the public to employees, for example tips to a waiter or taxi driver.

HMRC has chosen to announce withdrawal of the current guidance on this matter via the formal ESC Review to ensure those affected are given time to rearrange their affairs/processes ahead of the change of treatment that will apply from 6 April 2016. New guidance which clarifies the treatment of such income and sets it in the context of all the appropriate parts of the legislation will be available before April 2016.

### Further advice

If you have any questions about this please contact Su McLean-Tooke on 03000 586404 (email: susan.mclean-tooke@hmrc.gsi.gov.uk).

**ESC D45 – Capital Gains Tax: roll-over into depreciating assets**

This concession was introduced in order to overcome the perceived tension between a capital gains tax charge crystallising on the gain rolled over into a depreciating asset when the asset ceases to be used in the trade because of the death of the trader, and the general exemption that death is not an occasion of charge.

It has been decided to announce withdrawal of this concession because, having reviewed the legal position, our view is that the concession is not necessary. This is because the gain is already exempted by the existing legislation at section 62(1)(b) Taxation of Capital Gains Tax Act 1992 (TCGA). As such no gain arises under section 154(2) TCGA.

**Further advice**

If you have any questions about this please contact Tracy Gribble on 03000 585169 (email: tracy.gribble@hmrc.gsi.gov.uk)

## Chapter 3 – interim tax impact assessment

3.1 The nature of ESCs is that, in general, it is not necessary for taxpayers to make any formal claim to HMRC in order to make use of an ESC. This means HMRC has in many cases to estimate the extent to which they are used in practice.

3.2 The Government's tax policy making process includes ensuring the expected impacts of policy changes are understood throughout the policy making process.

3.3 This chapter sets out our interim assessment of the potential impacts of withdrawal of the ESCs detailed at chapter 2. Any relevant data we can gather during the withdrawal notice period, particularly from taxpayers affected or groups representing them will allow HMRC to better validate its interim assessment. Depending on the information available, a final assessment in the form of a tax information and impact note will be published nearer the time planned for the withdrawals to take effect.

### How to contribute

3.4 As outlined at paragraph 3.3 above we welcome comments on our interim assessment of the impacts of these withdrawals. Contributions by 08 January 2015 would be helpful to ensure they can be given sufficient consideration, but contributions after that time may also be taken into account prior to publication of the final tax information and impact note, if applicable.

3.5 Page 2 of this document above sets out how to contribute.

## Summary of impacts

| | | | | | |
|---|---|---|---|---|---|
| **Exchequer impact (£m)** | 2014-15 | 2015-16 | 2016-17 | 2017-18 | 2018-19 |
| | - | - | negligible | negligible | negligible |
| | HMRC has very little information on the use of these concessions, but do not expect their withdrawal to have a significant impact on tax receipts from 06.04.16. HMRC would welcome more information from those affected on the likely impacts. Any impact would be subject to scrutiny by the Office for Budget Responsibility. | | | | |
| **Economic impact** | No significant economic impacts are anticipated. | | | | |
| **Impact on individuals and households** | The withdrawal of these concessions is likely to affect very few individuals (and households) and the impact on affected individuals (and households) is anticipated to be negligible. There are no identified compliance costs for individuals or households. | | | | |
| **Equalities impacts** | Equalities impacts have been considered and none have been identified. | | | | |
| **Impact on business including civil society organisations** | There may be one-off familiarisation and system changes costs where employers have to operate the employment income rules ore benefits code rather than a concession, and ongoing costs due to additional record keeping requirements. These are expected to be negligible given the small overall number of taxpayers affected by the withdrawals.<br><br>We understand that most of the bigger football testimonials will donate to charity – most of the Premier League testimonials noted recently have donated all funds raised (after costs incurred by the testimonial committee) to charities of the player's choosing. In the bigger rugby and cricket testimonials up to 10% can be donated. These donations should not be adversely affected if individuals are encouraged to give using tax efficient methods such as Payroll Giving or Gift Aid, or by giving up all rights to the income. | | | | |
| **Operational impact (£m) (HMRC or other)** | The additional costs/savings for HMRC in implementing this change are anticipated to be negligible. | | | | |
| **Other impacts** | Other impacts have been considered and none have been identified. | | | | |

## Monitoring and evaluation

The impacts will be monitored through communication with the taxpayer groups affected.