

## Explanatory Note

### Clause 37: Payments from a sporting testimonial treated as earnings

#### Summary

1. This clause introduces the Income Tax charging provisions for income from sporting testimonials for employed sportsmen and sportswomen which are not otherwise earnings from their employment. It provides for new section 226E in Chapter 1, Part 5 ITEPA to clarify that such income is to be treated as earnings from the employment or former employment.
2. Where there is either a contractual right or a customary expectation that an employee who is a sportsman or sportswoman receives a sporting testimonial, that income already falls within section 62 ITEPA as earnings from the employment to a manager who arranges the testimonial. This clause sets out the treatment of income from sporting testimonials where no such right or expectation exists.

#### Details of the clause

3. Subsection (1) introduces new section 226E into ITEPA.
4. Subsection 2 provides that the new section will only come into effect where a sporting testimonial is made public on or after 25 November 2015 and the relevant events and activities take place on or after 1 April 2017.

#### Section 226E

5. Subsection (1) provides that new section 226E applies to individuals who are employed or were formerly employed as professional sportsmen or sportswomen. It should be read with subsection (3)(a). The provisions apply only where they are linked to a current or former employment as a professional sportsman or sportswoman. They do not apply in the context of self-employment as a professional sportsman or sportswoman.
6. Subsection (2) defines "sporting testimonial" for the purposes of this legislation. Sporting testimonials may relate to a single event, or may encompass a number of events stretching over a "testimonial year". Paragraphs (a) and (b) of the subsection provide for each contingency in reference to relevant events or activities.
7. Subsection (3) provides the meaning of "relevant event or activity" by setting out a number of conditions in paragraphs (a) - (c). To be a relevant event or activity the purpose (as provided for in paragraph (a)) of the testimonial must be to raise funds for the individual (S) in their capacity as a professional sportsman or sportswoman. Testimonials are widely understood as a means for the public to recognise S's contribution to a sport. Paragraph (b) provides that S or a representative of S cannot control the disbursement of income from a testimonial.

8. Subsection (4) prevents a number of different testimonials from being treated as a single one. In order to be a single testimonial, the same person must control the proceeds from all of the events. This may have implications for the application of the exemption which is being introduced under a separate clause as new section 306B ITEPA. Person, in this context, is the legal entity controlling the proceeds and may include an independent testimonial committee.
9. Subsection (5) provides that where the fund-raising is carried out by an individual, as long as certain conditions are met, the income raised will not be brought into the charge to tax under this section. This carves out minor fund-raising activities by individuals which provide nothing in return for donations from the public. The conditions are set out in subsection (6).
10. Subsection (7) provides the meaning of a "sporting testimonial payment" and subsection (8) provides that those payments are to be treated as earnings from the employment or former employment to which the testimonial is most closely linked.
11. Subsection (9) provides how income from a sporting testimonial is to be treated if S has died. For example, a testimonial arranged for the purposes of supporting S's surviving family members would not be brought into charge under this section if it is neither paid into S's estate nor paid to S's personal representatives.
12. Subsection (10) provides that the payment may be made in form other than money, for example, an easily liquefiable asset such as jewellery.

## Background note

13. The current tax treatment of income from sporting testimonials which take place where the employee has neither a contractual right or customary expectation to receive one has been identified as an extra statutory concession which goes beyond the strict statutory provisions. Following consultation, the government announced at the Spending Review and Autumn Statement 2015 (paragraph 3.18), that it would legislate to put the tax treatment beyond doubt.
14. Separate provisions for Income Tax exemption as announced, and for Corporation Tax deductions as appropriate are also being published on 9 December 2015.
15. If you have any questions about this change, or comments on the legislation, please contact the Employment Income Team on 03000 521589 (email: [employmentincome.policy@hmrc.gsi.gov.uk](mailto:employmentincome.policy@hmrc.gsi.gov.uk))