



HM Revenue
& Customs

Tax Treatment of Income from Sporting Testimonials – Proposals for Legislation

Consultation document

Publication date: 8 July 2015

Closing date for comments: 2 September
2015

Subject of this consultation:	Proposals for legislating the scope of the tax treatment of income from sporting testimonials
Scope of this consultation:	The purpose of the consultation is to engage with key stakeholders to establish options for the taxation of income from sporting testimonials or benefit matches. The current extra statutory practice falls outside HM Revenue & Customs' (HMRC) discretionary powers to not collect the tax deemed due by Parliament.
Who should read this:	The changes proposed will affect individual sportspersons who may be awarded a sporting testimonial or benefit after 6 April 2016. The government would particularly like to hear from sporting bodies and advisers and practitioners who may represent those bodies and/or individual sportspersons.
Duration:	The consultation will start on 8 July 2015 and end on 2 September 2015.
Lead official:	Mrs Su McLean-Tooke, Policy Adviser, HMRC.
How to respond or enquire about this consultation:	Postal address: Employment Income Team (Policy) Room 1E/08 100 Parliament Street London SW1A 2BQ Email: employmentincome.policy@hmrc.gsi.gov.uk
Additional ways to be involved:	Please contact the Employment Income Team by post or email if you are interested in meeting with HMRC to discuss the proposals put forward in this consultation document. We would hope to arrange any meetings during August 2015 to encourage the greatest degree of participation.
After the consultation:	The government will publish details of the consultation representations and its response at a future fiscal event. This will also include any decisions made by the government regarding this issue in light of comments received.
Getting to this stage:	This consultation is being held in response to representations received from the publication of HMRC's technical note and call for evidence on the withdrawal of extra statutory concessions published on 2 October 2014.
Previous engagement:	HMRC has met with a few key stakeholders to gain a better understanding of the role of sporting testimonials and benefit matches and the part played by independent testimonial committees.

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1. Introduction

- 1.1 HMRC considers that its tax treatment of income from sporting testimonials and benefit matches given to sportspeople has departed from the strict statutory position. As a result, the government is considering ways to put the tax and National Insurance Contributions (NICs) treatment of such income on a firm legislative basis.
- 1.2 The Technical Note and Call for Evidence on the latest tranche of extra statutory concessions (ESCs) under review was published on 2 October 2014. This proposed that HMRC withdraw its current guidance on the treatment of sporting testimonials and benefit matches and replace it with more comprehensive guidance that accurately reflects the current statutory position.
- 1.3 Following representations from a number of interested parties, the government is considering options to mitigate the impact of bringing the tax treatment in line with the current statutory position.
- 1.4 This consultation document puts forward a number of options and HMRC seeks views from all interested parties on how any exemption should operate.
- 1.5 The government does not intend these proposals to change the general corporation tax position of an independent testimonial committee. If the committee is considered to be trading, then its income will continue to be subject to corporation tax as appropriate.

2. Background

Testimonial matches

- 2.1 Testimonial matches are a long standing practice in the sporting world to honour a sportsperson's playing career. They are often held to mark the end of the sportsperson's playing career but might also be held to recognise a particular period of service with a particular club. The proceeds raised from the testimonial, net of costs, are paid over to the sportsperson and may reflect the proceeds from one match or a series of matches during a testimonial year
- 2.2 The practice started at a time when professional players were often relatively poorly paid. They had limited options for earning money after retiring from their sport and careers were often shortened by injuries which can be more easily managed now. Over the years the practice has evolved from a time when the amount the sportsperson received reflected little more than passing a bucket around spectators at a match to proceeds from many thousands of pounds from a special match or series of matches and related events.
- 2.3 Throughout this consultation document sporting testimonials is to be taken as including any matches/games or other events intended to provide a benefit or testimonial proceeds to a sportsperson.

HMRC guidance

- 2.4 There is no specific income tax legislation that covers sporting testimonials. However, HMRC has published guidance on the tax treatment of income from sporting testimonials given to individual sportspersons. This can be found in the Employment Income Manual at EIM64120 – <http://www.hmrc.gov.uk/eimanual/EIM64120.htm>
- 2.5 The guidance at EIM64120 – *Tax treatment of benefits matches and testimonials given to sportsmen and women – in particular rugby, soccer and cricket players* – confirms that where the right to a testimonial match is part of the sportsperson's contract of employment, or where the sportsperson's club always grants a testimonial match after a set qualifying period of service, the proceeds will always be taxable under Section 62 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) as earnings. In addition, if income received from a sporting testimonial or benefit match was derived from the sportsperson's employment then it would be liable to Class 1 NICs
- 2.6 EIM64120 goes on to explain that where there is no entitlement to the testimonial match, and no custom exists in respect of it, then the proceeds are not earnings within Section 62 ITEPA 2003. The guidance suggests this will usually be the case where the match is organised by a testimonial committee independent of the club.
- 2.7 EIM64120 does not currently provide guidance on other matters to consider where there is no entitlement to the testimonial match and no custom exists. HMRC believe there may have been 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 sportsperson.

- 2.8 The reference in EIM64120 to a testimonial committee follows existing case law, of which the leading decision is *Reed v Seymour* (11TC625) dating from 1927. This case established the principle that where a testimonial match is organised to demonstrate affection and regard for the personal qualities of the player, the proceeds are not from the employment and so are not earnings.
- 2.9 However, since the 1927 decision in *Reed v Seymour* and a number of other tax cases relating to this area, there have been some important changes to the legislation for income tax and NICs which extend the circumstances in which income received by an employee is taxable and subject to NICs as earnings, even if that income does not necessarily accrue directly from the employer. These changes are not fully reflected in the current guidance on sporting testimonials published by HMRC.

Development of legislation

- 2.10 As mentioned in 2.8 above, the decision in *Reed v Seymour* established that payments by individual contributors could be accepted as personal gifts which did not form part of the sportsperson's earnings if they were gifts made to the sportsperson in their personal capacity.
- 2.11 *Reed v Seymour* related solely to earnings and the decision pre-dates a number of legislative changes. HMRC now considers that even where a testimonial or benefit is organised independently of the employer, income arising may be liable to income tax and/or NICs contributions depending on the facts in each case.
- 2.12 The first of the relevant changes was the introduction of the benefits code for benefits in kind in 1948. There are strong arguments that when applying these rules, the amounts paid in respect of a sporting testimonial are chargeable as a cash benefit in kind under Section 203 ITEPA. The legislative test in Section 201 ITEPA for something being an employment-related benefit in kind, and therefore chargeable to income tax and, in respect of cash benefits, subject to Class 1 NICs, is that it is provided **by reason of** the employment, not just **from** the employment. As such, it includes a benefit or facility of any kind and could include those circumstances where the sporting testimonial or benefit match has been awarded because of the sportsperson's connection with the employer.
- 2.13 It would be almost unheard of for a sporting testimonial to be awarded without the agreement of the employer concerned, even where it is to be organised by a completely independent body. The 'grant' of a testimonial match by a club is almost always the trigger for the formation of a committee, so in most cases there is likely to be a clear connection between the sportsperson's employment and the sporting testimonial or benefit match.
- 2.14 The rules of sports governing bodies also make provision for the regulation of testimonials and benefit matches, often expressly restricting them by reference to a sportsperson's service for a club. Often the sportsperson will agree in their

contract of employment to abide by those rules thereby providing a further link between the testimonial and the sportsperson's employment.

- 2.15 These links mean that, depending on the facts in each case, it is difficult to argue that the income from a sporting testimonial is not received by reason of the sportsperson's employment and from this it follows that the payment should be treated as a taxable benefit which is also liable to Class 1 NICs.
- 2.16 The second of the relevant legislative changes was the introduction of rules on employment income provided through third parties (Part 7A ITEPA) in 2011. In Section 554A(1) ITEPA, one of the tests for determining whether the rules set out in Part 7A apply is that provision of the reward or recognition is **in connection with** the individual's employment, former employment or prospective employment. This is an even wider test than that of by reason of the employment.
- 2.17 There are a number of other conditions or 'gateways' which must be met before the rules in Part 7A can apply. For example, there must be an arrangement to which the individual is party or which otherwise relates to him or her. The definition of arrangement is wide – even if there is no general understanding that a sportsperson will get a testimonial upon attaining a certain milestone, active steps taken in organising a testimonial match (applications to the club or governing body for permission, the 'grant' or 'award' of a testimonial or benefit match, or the formation of a testimonial committee) are in themselves likely to qualify as a relevant arrangement.
- 2.18 For the rules in Part 7A to apply there must also be a relevant third party to take a relevant step pursuant to those arrangements. In the case of a testimonial match, this will generally be the independent testimonial committee making the payments to the sportsperson.
- 2.19 Finally, a sporting testimonial or benefit match is likely to be a very good example of a situation in which an employee may receive something as a reward for or in recognition of their services as set out in Section 554A.
- 2.20 Where income falls within Part 7A, there is no requirement on an independent testimonial committee to operate PAYE. If the committee does not operate PAYE on a voluntary basis, Part 7A of the legislation places a statutory requirement to operate PAYE on the actual employer, and the income is also liable to Class 1 NICs.

'Personal esteem'

- 2.21 As mentioned in 2.8 above, *Reed v Seymour* reflected the concept of personal esteem. This case established the principle that where a testimonial match is organised to demonstrate affection and regard for the personal qualities of the player, the proceeds are not from the employment and so are not earnings.
- 2.22 This is in contrast with the tax treatment of gifts from the public to other employees such as waiters, hairdressers and taxi drivers. For example, where a payment is made in a 'personal capacity' by a customer and is 'left on the table'

at the end of the meal, no PAYE or NICs liability arises as the payment is not deemed to have been derived from the employment. However, the **individual employee** is still liable to pay tax on the amounts received. There is no liability to NICs.

2.23 Where the **employer** has already received the tips and then passes these on to the staff or has a say in how the tips are distributed by a **troncmaster**, then these are earnings and are taxable and liable to NICs as they are derived from the employment. Where the troncmaster distributes the tips wholly independently of the employer, the amounts are chargeable to tax but no NICs liability arises. The troncmaster has to account for the tax under PAYE.

2.24 This demonstrates that gifts from the public can, if connected to the employment, already be subject to tax and, in some circumstances, also liable to NICs.

Technical Note and Call for Evidence

2.25 HMRC considers that the published guidance at EIM64120 has departed from the current statutory position and it would fall outside the Commissioners' powers to leave that guidance unchanged.

2.26 HMRC's view is that proceeds from sporting testimonials are primarily derived from the sportsperson's employment and the sums received should normally be taxable and liable to Class 1 NICs as earnings. This would bring the tax and NICs treatment of such sums in line with voluntary payments by the public to other employees, for example tips to a waiter.

2.27 HMRC's Technical Note and Call for Evidence on the latest tranche of extra statutory concessions (ESCs) under review was published on 2 October 2014. This proposed that HMRC withdraw its current guidance on the treatment of sporting testimonials and benefit matches and replace it with more comprehensive guidance that accurately reflects the current statutory position.

2.28 There were ten responses received in evidence with eight opposing withdrawal of the existing guidance.

2.29 One response recognised the fairness issues in relation to other taxpayers and thought that the sums received should be taxable as general earnings in line with other voluntary payments made by the public to employees, like tips, for example.

2.30 Another response had no objection in principle to withdrawal of the existing guidance but suggested that the government should consider whether the current tax treatment should be maintained if the sporting testimonial or benefit match was to be arranged to give support when a sporting career was ended through injury.

2.31 Several responses thought it was unfair to change the current treatment entirely, since the circumstances of sportspersons vary considerably. There were concerns that within the lower echelons of sport, the position in terms of general reward for less high-profile sportspersons had not changed very much. They

might still be relying on such awards to support them in retirement and changes could have a disproportionate effect.

2.32 There were also concerns by two respondents that any change to the legislation would effectively kill off sporting testimonials and benefit matches as there would be an element of double taxation which would mean that more than 60 pence in every £1 raised would go to the Exchequer. This is because independent testimonial committees are not recognised as the legal employer of the sportsperson for whom they are arranging the testimonial or benefit match, and any requirement to administer PAYE would provide no corresponding relief for corporation tax.

2.33 HMRC will be publishing a full Summary of Responses in response to the Call for Evidence in July 2015.

2.34 To ensure clarity and consistency the government is keen to put the tax treatment of sporting testimonials beyond doubt.

3. Possible options for legislation

Introducing an Exemption

- 3.1 HMRC has proposed the withdrawal of its current guidance on the tax and NICs treatment of sporting testimonials and benefit matches and its replacement with more comprehensive guidance that accurately reflects the current statutory position. This will not in itself bring about a statutory change in the treatment of sporting testimonials but, due to the current lack of clarity, the change is likely to result in more payments being treated as taxable and liable to Class 1 NICs.
- 3.2 The government has considered the responses to the Call for Evidence but does not intend to introduce a statutory exemption for all income arising from sporting testimonials.
- 3.3 However, the government is interested in views on introducing a partial exemption or de minimis amount which is not subject to tax or NICs. For example, legislation could provide that the first £x amount is treated as exempt from income tax and subject to a NICs disregard for the same amount, with only the income in excess of that threshold attracting tax and NICs. Such an exemption would offer protection to those for whom taxation of the proceeds from a sporting testimonial would have a disproportionate effect.

Q1. Should the government introduce an exempt amount which is not subject to tax or NICs?

Q2. If you consider that a tax and NICs free amount should be introduced, what level do you think that amount should be and why?

Frequency of any Exemption

- 3.4 Some sportspersons receive more than one award of a sporting testimonial during their career. This might be because they receive them to recognise different lengths of service – for example they receive one to recognise five years with the club and then receive another a few years later. Alternatively, it might be because they are organised for the sportsperson's service to different clubs.
- 3.5 Sporting testimonials often involve a series of matches or a 'testimonial year' which may straddle more than one tax year. The government believes that such matches are part of 'an award' and, therefore, would qualify for only one exemption – in other words this is not an annual award.
- 3.6 Legislation could specify that any exemption is to be a lifetime exemption and can be used only once or it could be available for each sporting testimonial during service with a particular club. The latter would mean that a sportsperson who frequently changes clubs could benefit from numerous exemptions but the former, potentially, introduces complexity into the rules. For example, the sportsperson would have to tell a club whether they have previously utilised the exemption.

Q3. Should any exemption apply to each sequence of sporting testimonials or should it be a lifetime exemption?

Q4. Where a series of matches straddle more than one tax year do you agree there should be a single exemption?

Upper limit

- 3.7 If an exemption is to be introduced, the government is keen to hear views as to whether or not there should be an upper limit so that the exemption would no longer apply if the income from the testimonial was above a set amount. Such a limit would protect the less well paid.
- 3.8 If an upper limit was to be introduced there are two ways in which it could operate:
- (a) An automatic exclusion so that if the income from the sporting testimonial exceeded a particular amount then the whole amount would be subject to tax and NICs.
 - (b) A tapering exclusion so that where the income from the sporting testimonial exceeds the proposed exemption referred to in 3.3 above, the exemption would be tapered until it was entirely extinguished.

Q5. Do you agree that there should be an upper limit and if not, why not?

Q6. If you agree there should be an upper limit, what amount should the limit be set at and why?

Q7. If you agree there should be an upper limit, do you favour an automatic or a tapering exclusion?

Corporation Tax

- 3.9 Two respondents to the Call for Evidence were concerned about double taxation because the independent testimonial committee is subject to corporation tax but cannot deduct costs for the individual against company profits for the purpose of calculating corporation tax. This is because the committee is not legally the employer, even if they are required to operate PAYE.
- 3.10 The government believes this could be alleviated by introducing legislation that deems an independent testimonial committee to be the legal employer for the purposes of sporting testimonial matches. This would mean that the committee would be entitled to make a deduction from its corporation tax liabilities in respect of 'employment' related costs.
- 3.11 This deeming provision of treating the independent testimonial committee as the legal employer for the purposes of sporting testimonials and benefit matches is only likely to apply to income that would not automatically fall within Section 62 ITEPA which would mean that the treatment set out in the Business Income Manual at BIM66002 – '*Sports testimonials: Testimonial Committee – PAYE and NIC*' would still apply.

Q8. Do you agree that concerns about double taxation would be alleviated if the government introduced legislation which deemed an independent testimonial committee to be the legal employer for the purposes of the sporting testimonial?

- 3.12 Charitable giving is often a feature of the final disposal of income raised from sporting testimonials and some respondents to the Call for Evidence felt that there could be a negative impact on this sector. The government is aware that charities are often the final recipient of such income, but there is existing legislation in place which mitigates the effect of tax on donations to charities.
- 3.13 Current legislation provides tax relief where donations are provided through Gift Aid or from Payroll Giving. The most appropriate in this context is probably Payroll Giving where an individual elects to make the donation directly through the employer so that tax relief is provided at source (where the employee is subject to higher rate tax, a donation of 60 pence means the charity receives £1) so income tax is relieved in full.
- 3.14 The government does not intend to disturb this current tax relief for sporting testimonials.

Q9. Are there any other options for reform which you think the government ought to consider?

4. Summary of Consultation Questions

- 1. Should the government introduce an exempt amount which is not subject to tax or NICs?**
- 2. If you consider that a tax and NICs free amount should be introduced, what level do you think that amount should be and why?**
- 3. Should any exemption apply to each sequence of sporting testimonials or should it be a lifetime exemption?**
- 4. Where a series of matches straddle more than one tax year do you agree there should be a single exemption?**
- 5. Do you agree that there should be an upper limit and if not, why not?**
- 6. If you agree there should be an upper limit, what amount should the limit be set at and why?**
- 7. If you agree there should be an upper limit, do you favour an automatic or a tapering exclusion?**
- 8. Do you agree that concerns about double taxation would be alleviated if the government introduced legislation which deemed an independent testimonial committee to be the legal employer for the purposes of the sporting testimonial?**
- 9. Are there other options for reform which you think the government ought to consider?**

5. The Consultation Process

This consultation is being conducted in line with the Tax Consultation Framework. There are 5 stages to tax policy development:

- Stage 1 Setting out objectives and identifying options.
- Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.
- Stage 3 Drafting legislation to effect the proposed change.
- Stage 4 Implementing and monitoring the change.
- Stage 5 Reviewing and evaluating the change.

This consultation is taking place during stage 2 of the process. The purpose of the consultation is to seek views on the detailed policy design and a framework for implementation of a specific proposal, rather than to seek views on alternative proposals.

How to respond

Responses should be received by 2 September 2015 –

By post to: Mrs Su McLean-Tooke, Employment Income Team, Room 1E/08, 100 Parliament Street, London SW1A 2BQ.

By email to: employmentincome.policy@hmrc.gsi.gov.uk

Enquiries can be routed through the email address above.

A summary of the questions in this consultation is included at chapter 4.

Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from [HMRC's GOV.UK pages](#). All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

Confidentiality

Information provided in response to this consultation, 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 confidentiality 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.

Consultation Principles

This consultation is being run in accordance with the Government's Consultation Principles.

The Consultation Principles are available on the Cabinet Office website: <http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>

If you have any comments or complaints about the consultation process please contact:

Oliver Toop, Consultation Coordinator, Budget Team, HM Revenue & Customs, 100 Parliament Street, London, SW1A 2BQ.

Email: hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk

Please do not send responses to the consultation to this address.

Annex A: List of stakeholders consulted and/or responding to the Call for Evidence

Cricket Discipline Committee
DAC Beachcroft LLP
England and Wales Cricket Board
Law Society of Scotland
Mills and Reeve
Professional Cricketers' Association
PFA Scotland
Smith & Williamson
Sport and Recreation Alliance
One individual responding on a personal basis

Association of Accounting Technicians
Association of Taxation Technicians
Chartered Institute of Taxation
DAC Beachcroft LLP
General Practitioners Defence Fund
Gibson Dunn & Crutcher LLP
Hollands Taxation Agent
Institute of Chartered Accountant of Scotland
Institute of Chartered Accountants in England and Wales
Law Society of Scotland
Mills & Reeve
Moore and Smalley
PFA Scotland
PWC
Smith & Williamson
Sport and Recreation Alliance
One individual responding on a personal basis

Annex B: Assessment of Impacts

Summary of Impacts

Exchequer impact (£m)	2014-15	2015-16	2016-17	2017-18	2018-19
	-	-	Negligible	Negligible	Negligible
Economic impact	This measure is not expected to have any economic impact.				
Impact on individuals and households	This measure is not expected to have any impact on individuals, households and families.				
Equalities impacts	No equalities impact identified.				
Impact on businesses and Civil Society Organisations	This measure is expected to have no impact on businesses or civil society organisations.				
Impact on HMRC or other public sector delivery organisations	Exclusion of a proportion of this income from income tax and NICs would only involve revised guidance and the normal communications we would provide for a rule change. As no IT change would be required to support this, costs can be met within existing budgets.				
Other impacts	No other impacts identified.				