



HM Revenue  
& Customs

# Withdrawal of extra- statutory concessions

**Summary of Responses**  
July 2015

# Contents

1	Introduction	3
2	Responses	4
3	Next Steps	8
Annex	List of respondents	9

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# 1. Introduction

- 1.1 HMRC set up a Review of Extra-statutory concessions (ESCs) following the House of Lords' decision in the *Wilkinson*<sup>1</sup> case, which clarified the scope of HMRC's administrative discretion to make concessions that depart from the strict statutory position.
- 1.2 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or appropriate to give statutory effect to a concession which exceeds the scope of HMRC's discretion it will need to be withdrawn. HMRC published a technical note in October 2014 giving notice that three such concessions were to be withdrawn from 06 April 2016. The note invited comments on the proposed withdrawals as well as evidence to update the draft impact assessment.
- 1.3 Seventeen responses were received, mainly from accounting and legal representative bodies, but also from those representing General Practitioners and sportspeople. HMRC are most grateful to those responding for taking the time to set out their views, which have been taken into account in determining the way forward for this work.
- 1.4 The responses provided some evidence of the impact on users of withdrawing these concessions, and in light of those responses HMRC is continuing to consider the way forward for two of the concessions. Given this the original impact assessment has not been updated or reproduced in this document.

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<sup>1</sup> [R v HM Commissioners of Inland Revenue ex p Wilkinson \[2005\] UKHL 30](#)

## 2. Responses

### **EIM 03002: Professional remuneration administrative practice (Income Tax)**

#### Introduction

- 2.1 This concession allows professional practitioners to treat incidental income from an office or employment as part of their trading or professional income for tax (but not National Insurance) purposes.
- 2.2 HMRC's view set out in the technical note was that Defra were the main users of this concession and that following a change in their procedures the concession was largely no longer needed and should be withdrawn.

#### Responses

- 2.3 Ten responses were received on this concession and all but one objected to the proposed withdrawal.
- 2.4 All the responses made the point that the concession is used much more widely than HMRC believe.
- 2.5 It was generally felt to be used by doctors working in community hospitals, clinics and hospices, dentists in hospital clinics, solicitors who act as tribunal judges, surveyors working for local councils, and generally by accountants and solicitors. There were also particular issues in respect of partnerships. Respondents told us that the concession should be retained because it simplifies the calculation of tax and NIC liabilities on income received from such additional work. It was asserted that the concession does not involve a loss of tax and its removal could have a detrimental impact on the pensions of General Practitioners (GPs).
- 2.6 One estimate was that it could affect in the order of 7500 GPs and mean an extra hour of work needed to complete each partner's annual tax return. There would also be changeover costs for the payers and NHS trusts making payments to certain GPs, with the need to revise NHS Clinical Commissioning Group protocols and procedures.
- 2.7 It was suggested that HMRC should do more research on the extent of use and the impact of removing this concession before a final decision is taken.
- 2.8 One response suggested HMRC should not withdraw the concession until the Office of Tax Simplification has completed its review of Employment Status. It was suggested that the outcome of that review can make matters clearer for employers/engagers then it may go some way to eliminating some of the existing grey areas. HMRC should also consider extra guidance.
- 2.9 If the decision is to withdraw the concession one response asked for assurance that it would not affect the taxation of postmasters, entertainers and performers.

- 2.10 Although not part of this consultation two responses commented on similar extra-statutory concessions that permit certain fees received by individuals to be pooled and treated as partnership or company income for tax purposes. Both respondents pointed out that this group of concessions provide valuable easements and that consideration should be given to legislating for their effect.
- 2.11 The one response in favour of withdrawal asserted that the concession confuses the line between employment and self-employment and is therefore misleading and a bad administrative practice.

## **EIM 64120 – Sports Testimonials (Income Tax)**

### Introduction

- 2.12 HMRC's guidance on the taxation of income derived from a sports testimonial 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 has been interpreted by those arranging testimonial and other similar events as meaning the proceeds will not usually be taxed where the events have been arranged by an independent committee.
- 2.13 HMRC's view is that testimonial and similar proceeds are primarily derived from the sportsperson's employment, and the sums received should normally be taxable as general earnings. The intention to rewrite the guidance to clarify this view was set out in the October 2014 technical note.

### Responses

- 2.14 Ten responses were received on this point and eight opposed withdrawal of the guidance, with several pointing out that this is not a concession but a practice that arises from an extensive body of case law.
- 2.15 One response recognised the evolution in the financial landscape in respect of the remuneration of professional sportspersons, and in fairness to other taxpayers agreed that the sums received should be taxable as general earnings in line with other voluntary payments by the public to employees. They had no objection to withdrawal provided there would be provision to ensure no detrimental impact on the good causes that testimonial income often benefits.
- 2.16 Another respondent had no objection in principle to the proposal but suggested consideration of maintaining the current rules where a testimonial is arranged due to a career-ending injury. This respondent also suggested the impact of withdrawal would not necessarily be as small as suggested in the technical note and that the change should be widely publicised to ensure all taxpayers are fully informed.
- 2.17 Six respondents felt that the guidance followed the case law and made the position clear. Several asked what evidence HMRC had that the guidance had been improperly applied and whether HMRC had challenged these cases, stating that HMRC needed to explain why they think the guidance is outdated and to set out their view on the current case law.
- 2.18 Several responses thought it was unfair to remove the guidance completely since the circumstances of sportspeople vary considerably. Others argued that for the lower

echelons of many sports not much will have changed since testimonials began, and that less high profile athletes would be unfairly penalised if the concessionary treatment was removed. Three responses stated that the comparison drawn in the technical note with tips was inappropriate, since such sums are paid for direct services received and were more than often expected. The reference to disguised remuneration rules in the discussion document was thought to be confusing.

- 2.19 In particular, two responses argued that this would effectively finish the testimonial system since more than 60 pence in every £1 from testimonial income would go to the Exchequer.
- 2.20 Several responses criticised the way this proposed change was announced, claiming it was hidden in an unhelpfully titled document that was not specifically brought to the attention of those sports bodies that have been in discussion with HMRC over the treatment of such income for many years.
- 2.21 It was recognised by some respondents that time was being given for those affected to rearrange their affairs, but it was thought to be essential for HMRC to discuss the impact of withdrawing the guidance with the key sports bodies involved in awarding sports testimonials before the guidance is withdrawn.
- 2.22 One response recommended that the Government considers permitting sportspeople affected by short sports careers to contribute up to the whole amount of any sports testimonial proceeds subject to employment tax into a pension scheme (subject to the lifetime cap), and so receive relief from income tax and NICs on these sums.
- 2.23 It was suggested that any new guidance should cover all tax aspects of testimonials (such as corporation tax and VAT), not just employment taxes. In general the remedy was thought to be to revise the guidance to ensure that the tax treatment of this income is clear and for HMRC to ensure the guidance is properly applied in practice.
- 2.24 Several responses included information on the number and type of testimonials undertaken in recent years, and HMRC is very grateful for this data which will be used to help assess the best way forward.

## **ESC D45 – Roll-over into depreciating assets (Capital Gains Tax)**

### Introduction

- 2.25 This concession ensures that a capital gains tax (CGT) charge does not arise where roll-over relief has been claimed and the claimant later dies. It makes clear that the general exemption that death is not an occasion of charge applies in all cases. HMRC's view is that the concession is not needed as the existing legislation already gives this result.

### Responses

- 2.26 Nine responses were received on this ESC and five supported withdrawal.
- 2.27 Of those that supported withdrawal, some saw the ESC as less of a concessionary treatment and more a clarification of the existing law.

2.28 Those that supported legislating considered that section 154(2)(b) of Taxation of Chargeable Gains Act 1992 (TCGA) should be extended to make it clear that no charge in respect of held over gains arises. However, two of those respondents were also of the view that if HMRC's legal advice is that the ESC is not necessary then it would be enough to clarify the legal position in guidance.

## 3. Next steps

- 3.1 HMRC have considered the responses received and set out below the action taken in respect of each concession as well as the next steps.

### **EIM 03002: Professional remuneration administrative practice (Income Tax)**

- 3.2 HMRC are continuing to consider the responses and are seeking to gather further evidence of the potential impacts of withdrawing the concession. HMRC will consult further with interested groups and wider stakeholders over the coming months in order to better understand the use of the concession and the impacts of its withdrawal.
- 3.3 HMRC will also consider any mitigation options, particularly for affected groups, before a final decision is taken on whether to continue with the proposed withdrawal of this concession.

### **EIM 64120 – Sports Testimonials (Income Tax)**

- 3.4 The government announced a further consultation on the way forward in respect of the tax treatment of payments made from sporting testimonials at the Budget. The consultation document can be found at:  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/442892/Tax\\_Treatment\\_of\\_Income\\_from\\_Sporting\\_Testimonials\\_-\\_Proposals\\_for\\_Legislation.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/442892/Tax_Treatment_of_Income_from_Sporting_Testimonials_-_Proposals_for_Legislation.pdf)  
Any changes to the current guidance will depend on the outcome of this further consultation.

### **ESC D45 – Roll-over into depreciating assets (Capital Gains Tax)**

- 3.5 HMRC will formally withdraw the ESC from April 2016, as it is considered that interpretation of the existing legislation gives the result intended. Guidance will be clarified to make the position certain.



## Annex: List of respondents

Association of Accounting Technicians  
Association of Taxation Technicians  
Chartered Institute of Taxation  
DACbeachcroft  
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

