



Tax treatment of income from Sporting Testimonials

Summary of Consultation Responses
9 December 2015

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1. Introduction

Background to the consultation

1.1 The tax treatment of income accruing to employees of sports clubs from sporting testimonials and benefit matches has for many years relied on the outcome of a tax case from 1927 (*Reed v Seymour*). This case concluded that the proceeds of a testimonial organised to demonstrate affection and regard for the personal qualities of a sports person are not earnings, and are not sourced from the employment.

1.2 Since the decision in *Reed v Seymour* significant changes have been made to the legislation underpinning what is now considered to be employment income. In 1948 the 'benefits code' was introduced and created a tax charge on 'benefits in kind'. More recently in 2011 Part 7A of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) was introduced to tax as employment income payments and benefits in kind provided through third parties, where those payments are connected to the employment.

1.3 HM Revenue and Customs (HMRC) published guidance on the tax treatment of income from sporting testimonials which does not properly reflect either of these pieces of legislation. Therefore the guidance could be regarded as an extra statutory concession which is outside the scope of HMRC's discretionary powers to manage the tax system.

1.4 The decision of the House of Lords¹ in 2005 in the *Wilkinson*¹ case, clarified the limited extent of HMRC's administrative discretion to make concessions that depart from the statutory position. Following this HMRC set up a review of existing extra-statutory concessions.

1.5 Where it is not possible or appropriate to give statutory effect to a concession which exceeds the scope of HMRC's discretion, then the extra statutory concession will be notified for withdrawal. As part of the ongoing programme to review existing concessions HMRC published a technical note in October 2014 giving notice that three such concessions were to be withdrawn with effect from 6 April 2016. This included the guidance that covered the current practice for taxing income from sporting testimonials and benefit matches. The note invited comments on the proposal to withdraw these concessions.

1.6 Ten responses to the technical note focussed on the sporting testimonials concession, eight of which opposed withdrawal. These were mainly from accounting and legal representative bodies, but also from those representing sportspeople. A summary of the responses received was published on 20 July 2015.²

1.7 The responses provided some evidence of the impact on users of withdrawing the concession. The government announced at the March Budget 2015 that the current tax treatment of payments from sporting testimonials would remain while it considered those representations. The government further confirmed that no changes would be made before April 2016.

¹ <http://www.publications.parliament.uk/pa/ld200405/ldjudgmt/jd050505/wilkin-1.htm>

² <https://www.gov.uk/government/consultations/withdrawal-of-extra-statutory-concessions>

1.8 Information on the number of individuals who are currently granted testimonials or benefit matches is not readily available, and those representing the major sporting bodies have said their own information about this is limited. However, our research indicates that there are on average 220 testimonials / benefit matches taking place every year. The income raised through each testimonial / benefit averages £72,000.

1.9 At summer Budget 2015, to better understand the impact of withdrawing the concession, the government announced a consultation on reforming the rules on the tax treatment of income from sporting testimonials. The consultation, *'Tax treatment of sporting testimonials – proposals for legislation'* ran from 8 July 2015 until 2 September 2015.³

1.10 The government would like to thank respondents for their contributions and for taking the time to respond and attend meetings on this consultation. This document summarises the content of the responses received from this latest consultation. It also sets out how the government intends to proceed regarding the taxation of income from sporting testimonials and benefit matches.

2. Responses

Analysis of responses

2.1 In total, sixteen written responses to the consultation were received. Of these, one came from a Member of Parliament, six from sporting representative bodies, one from a sports club, four from accountancy firms and four from other tax professional representative bodies. A full list of those submitting written responses is contained in Annex A. In addition two consultation meetings were held to discuss the detailed proposals. These were attended by representatives from four sporting associations, two accountancy firms and four other representative bodies.

2.2 Opinion was divided. Half of respondents felt that the position set out in *Reed v Seymour* should still apply. They considered that HMRC's interpretation of the impact of tax legislation introduced since the *Reed* judgement was incorrect and that case law takes precedence. They argued that if the taxation of sporting testimonials and benefit matches had to be put onto a legislative footing, it should be made clear that no liability to income tax or National Insurance contributions (NICs) would arise, thereby preserving current practice.

2.3 Respondents felt that, in most cases, income from a sporting testimonial or benefit match was from voluntary contributions made by sports fans in appreciation of a sportsperson with a long and distinguished career in their sport. The contribution was often made when that sportsperson was retiring for reasons that could include illness, injury or a close bereavement. Any changes would be to the detriment of the existing testimonial system.

'The decision in Seymour v Reed, has worked well and there is no need for any specific income tax legislation to cover sporting testimonials. If any were to be introduced, there would be serious repercussions and probably the present benefits system would be destroyed.'

³ <https://www.gov.uk/government/consultations/tax-treatment-of-income-from-sporting-testimonials-proposals-for-legislation>

2.4 The remaining respondents felt that income from sporting testimonials and benefit matches should be taxable but many favoured some form of exemption.

'We welcome the move to reappraise the tax treatment of income from sporting testimonials and benefit matches. We believe that this is an opportunity to simplify and improve an area of the income tax system that has been misunderstood on occasions over the years.'

'We can appreciate the fact that, with the combined impact of Section 203 and Part 7A of ITEPA, it is increasingly difficult to argue that the receipt of any sporting testimonial is not received by reason of a sportsperson's employment.'

2.5 Respondents overwhelmingly agreed that where a sportsperson had a contractual entitlement with their club to a testimonial or benefit match, then the income received should be fully liable to tax and NICs as earnings as is the case now.

'We agree that testimonial receipts are taxable where the employee has a right to a testimonial in their employment contract, whether explicitly or implicitly, for example through custom, so that the payments are clearly 'from' the contract of employment.'

Detailed responses to the 9 consultation questions

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

2.6 Of the responses received, eighty per cent supported an exemption from tax and NICs liability for income from a sporting testimonial or a benefit match.

'We welcome the introduction of a statutory exemption as a very sensible way to mitigate the impact on those in the lower echelons of sport whose testimonial payments may feature at the lower end of the spectrum.'

2.7 Some respondents felt that proceeds from a sporting testimonial or benefit match that was organised for a sportsperson who was retiring from their sport due to injury, illness or a close bereavement should be wholly exempt without limit.

'We expressed the view that situations concerning genuine voluntary payments from the public to someone who is having to retire early from a career due to injury or ill-health should continue to be completely exempt from tax.'

Government Response

The government agrees with those respondents who have said that the tax and NICs treatment of proceeds from sporting testimonials and benefit matches needs to be put beyond doubt. Draft legislation setting out the government's proposals for reform, was published following Autumn Statement 2015. This confirms that income from a sporting testimonial or benefit match is chargeable to income tax and liable to NICs, irrespective of whether there is a contractual entitlement, or it is provided by an independent testimonial committee.

There will be no change to the current practice where a sports person has a contractual entitlement or expectation due to custom to the proceeds from the award of a sporting testimonial / benefit match. Income tax and NICs will continue to be due on the full amount of the proceeds.

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?

2.8 Responses to this question were mixed. Some felt that an exemption should be unlimited; others suggested exempt amounts which varied between £30,000 and £300,000. One respondent said that any exempt amount should be automatically index-linked to ensure that its value did not diminish over time with inflation.

‘Any exempt amount should be unlimited. There are relatively few sporting testimonials each year and a high proportion would be organised for sportspeople who have suffered some form of injury preventing them from participating in their sport.’

‘However, if there is to be an exempt band, we consider that a fair figure would be that the first £150,000 of testimonial proceeds would be exempt from income tax and NICs in the players’ hands.’

‘We believe that this amount should be significant – certainly no less than £50,000’

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

2.9 The vast majority of respondents said that if an exemption was to be introduced it should be a single lifetime exemption. Respondents said it was very rare for a sports person to have more than one testimonial or benefit match. The balance of any unused exemption should be available to set against a future testimonial or benefit match should that occur.

‘If the exemption were to apply to each sequence of sporting testimonials we could see this leading to exploitation of the exemption which may then jeopardise its continued existence as part of the tax system.’

‘Testimonials now take many different forms, and may not simply be a single match, but a series of events. To properly reflect the nature of modern testimonials the exemption should be given on a lifetime basis to allow for multiple events, and also for the possibility that a player may receive a testimonial from more than one club.’

2.10 However, others thought that the potential for offsetting the unused portion of an exemption against future testimonial income could introduce difficulties for testimonial committees. They would need to be aware not only of previous awards, but of the level of income received and the amount of the exemption previously used. This would introduce complexity into the legislation that might well be disproportionate to the very small numbers of sports persons receiving more than one testimonial.

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

2.11 Again the vast majority of respondents felt that the exemption should not be tied to a particular tax year. The point was made that sporting calendars are not aligned to tax years and that events for a testimonial could quite easily straddle more than one tax year.

'An exemption should be able to be utilised fully and a player whose testimonials straddle more than one tax year should not be unfairly affected. We therefore recommend that any unused exemption at the end of a tax year should be rolled over into the following tax years until such a time as it has been fully utilised, in the same manner as carried forward trading losses.'

Government Response

The draft legislation includes a limited exemption. Where there is no contractual entitlement or expectation due to custom to the proceeds from the award of a sporting testimonial / benefit match the first £50,000 of any such proceeds will be exempt from income tax and not liable to NICs. This exemption will apply to all sportspersons in their capacity as an employee or former employee irrespective of the size of the proceeds arising from their sporting testimonial or benefit match. The new legislation will apply to any income from a sporting testimonial or benefit match received from 6 April 2017 onwards, provided that the testimonial or benefit match was awarded on or after the date of Autumn Statement 2015 (25 November 2015).

The exemption will be available for the testimonial year of a sportsperson and against the income from 'events' that take place during that year. The testimonial year may run over more than one tax year. Any unused part of the exemption for that testimonial year will not be available to be used against a future testimonial for the same sportsperson. The trigger for the exemption to apply will be the date on which the first 'event' is held for the testimonial year, where the award of the testimonial/benefit has been made on or after 25 November 2015 and the event itself takes place on or after 6 April 2017.

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

2.12 Overall, sixty five per cent of respondents were not convinced of the need for an upper limit at which point the exemption is either not available at all, or begins to taper away.

'We think that this really depends on what level the exemption is set at. If it is only a relatively small amount then we do not see any real need to claw it back and it is probably fairer to say that everyone gets the total amount of the exemption regardless of the actual amount of the testimonial payment.'

'If an upper limit to the exemption can be implemented and is workable without unnecessary complication, we would favour its introduction.'

'We are not convinced that an upper limit is necessary.'

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

2.13 Most respondents did not suggest an amount for any upper limit. Some commented that it should be set at a significant level in order to make sure sportspersons on modest means are protected and do not lose some or all of the exemption available.

2.14 Where respondents did propose an upper limit, this ranged between £30,000 and £300,000. One respondent said that an exemption and upper limit should be set at the same level, suggesting using the level of the exemption currently in place for the taxation of termination payments at £30,000.

'We believe that an upper limit should be set at an amount of £100,000. We favour a simple approach whereby if any income from a sporting testimonial exceeds this amount then the whole amount is automatically subject to tax and NICs rather than a tapering method.'

'In our opinion the limit should be the same as for termination of employment provisions – currently £30,000.'

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

2.15 Respondents were split equally between those who thought that once the testimonial proceeds reached any upper limit set, the exemption should then taper away, and those who favoured an automatic exclusion. Respondents in favour of an automatic exclusion recognised this would create a 'cliff edge', but thought on balance that this would be simpler to operate. Respondents in favour of the exemption being tapered after the testimonial reached the upper limit thought that this would be fairer to the individuals concerned.

'Although we are not convinced that an upper limit is necessary, if one is to be imposed we would favour a tapering exclusion. This option would be consistent with other parts of the tax system where an exemption is affected. This option is also a more proportionate approach and prevents any cliff-edge effect whereby £1 of income over the upper limit results in a complete loss of the exemption.'

'An automatic exclusion would be simpler to operate but would produce a 'cliff edge' effect.'

Government Response

The government has considered the responses on the issue of imposing an upper limit for the exemption to apply and has concluded that this would introduce untoward complexity in the legislation. The exemption will therefore apply no matter the level of income generated.

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?

2.16 Respondents were overwhelmingly in favour of an independent testimonial committee being able to offset any PAYE costs against any Corporation Tax liability of the committee.

2.17 However, they did not think it a good idea that the committee be deemed to be the legal employer, as this then would introduce other legal responsibilities as an employer and confer other employment rights to the sportsperson. Instead they favoured the testimonial committee being the employer for PAYE purposes only, so that these costs could be offset against any Corporation tax liability arising.

'We welcome the proposals relating to the testimonial committees. The treatment of the committee as the legal employer would alleviate concerns over double taxation as the committee would be able to offset the distributions made to the player for corporation tax purposes, significantly reducing their corporation tax liabilities as the majority of funds are distributed.'

'We think that it would be simpler to just add to the existing legislation words to the effect that in such circumstances, whilst the committee is not considered to be the legal employer, it is required to operate PAYE from the testimonial and this payment of PAYE will be an allowable deduction when calculating the committee's corporation tax position.'

Government Response

The government has agreed to introduce amendments to corporation tax which will allow an independent testimonial committee to deduct 'employment' expenses from income that would otherwise be liable to corporation tax as trading income. It agrees that legislation deeming the independent testimonial committee to be the legal employer is not needed, as there are already provisions which would require it to operate PAYE.

Independent testimonial committees will be required to operate Pay as you Earn (PAYE) on the proceeds from a non-contractual sporting testimonial or benefit match in excess of the £50,000 exemption. To prevent 'double taxation' the committee will be able to deduct the amount paid over to the sportsperson and any PAYE and NICs costs in calculating its profits chargeable to Corporation Tax.

Requiring the committee to operate PAYE will not confer any other legal employer responsibilities upon the independent testimonial committee. It will also not confer any other employment rights to the sportsperson. The current legislation will be adjusted to make provision for tax deductions to be made at the sportsperson's marginal rate of tax.

Q9 Are there other options for reform which you think the Government ought to consider?

2.18 This question prompted a number of different responses. One respondent said that in deciding at what level an exemption should be set, proceeds from testimonials or benefit matches arranged for a sportsperson retiring due to ill health, injury or a close bereavement should be wholly exempt from income tax and NICs.

'We would urge HMRC to consider allowing cases where a career is ending due to injury or ill-health to be considered as complete exceptions from income tax, akin to the disability and injury exception that exist for termination payments under Section 401 ITEPA 2003.'

2.19 Another respondent felt that in order to put the matter beyond doubt any income from a sporting testimonial or benefit match should be covered by a new exemption in Part 7A Income Tax (Earnings and Pensions) Act 2003. They said;

'If HMRC feels that it needs to act, it should give serious consideration as to whether it would be simplest and best to introduce amendments to the disguised remuneration legislation (Part 7A ITEPA) and the published guidance concerning the benefits code rather than further complicating the tax system with new exempt amounts and limits.'

2.20 Some respondents also felt that where some or all of the proceeds were donated to charity directly by the testimonial committee, that in these circumstances there should be no PAYE liability arising upon the testimonial committee for either income tax or NICs. Respondents were also pleased to note that where the sportsperson directly donated some or all of the proceeds of their testimonial or benefit match to Charity, that Payroll Giving or Gift Aid relief would be available.

'We are also in favour of a further corporation tax and income tax / NICs exemption in instances where all proceeds which would have been given to the player are instead given directly by the testimonial committee to charitable causes.'

'We note and welcome the comments in the consultation document regarding the government's intention not to disturb the current tax relief for charitable donations of income arising from sporting testimonials made by sportsmen and women via Payroll Giving or Gift Aid.'

Government Response

The government recognises that those sportspersons who are at the top end of their sport very often donate all, or a significant part of the proceeds from their sporting testimonial or benefit match to charitable causes. Payroll Giving and Gift Aid which gives relief from income tax will continue (as now) to be available to those sportspersons where such donations are made, as long as these are qualifying payments for tax purposes.

Where donations are made by an individual either under Payroll Giving or by Gift Aid there is currently no relief for NICs on the sum donated. To give relief from NICs where part or all of the proceeds from a sporting testimonial or benefit match are donated to charitable causes would not be in line with current policy, and therefore primary and secondary Class 1 NICs will still continue to be due.

3. Next steps

Implementation

3.1 The Government announced at Autumn Statement 2015 that income from all sporting testimonials and benefit matches for employed sportspersons will be liable to income tax and NICs from 6 April 2017. This will be so whether the sportsperson has a contractual right or not to the testimonial or benefit match.

3.2 As part of that announcement it will introduce an exemption from tax and NICs for non-contractual sporting testimonials and benefits matches that will apply from 6 April 2017. The change will be implemented from this date to allow testimonial committees and sports bodies' sufficient time to make any adjustments to their processes.

3.3 Draft tax legislation to put this into effect was published on 9 December 2015. We invite your comments on the draft legislation. This consultation will run for 8 weeks. Separate legislation for NICs will follow later.

3.4 Comments on the draft legislation may be sent to HMRC, by e-mail if possible to employmentincome.policy@hmrc.gsi.gov.uk

Alternatively comments may be made by post to the following address;

Mrs Su McLean-Tooke
Employment Income Policy Team
Her Majesty's Revenue and Customs
Room 1E/08
100 Parliament Street
London SW1A 2BQ

Annexe A: List of stakeholders who submitted written responses

We are grateful to all those who took time to send written responses to this consultation each of which has been taken into consideration in shaping the detail of this policy. Those who submitted written responses are shown below, and in addition to these there was another response that came from an individual.

Association of Taxation Technicians
Chartered Institute of Taxation
England & Wales Cricket Board
Everton Football Club
The Football Association
Grant Thornton
Institute of Chartered Accountants (England & Wales)
Institute of Chartered Accountants (Scotland)
KPMG
A Member of Parliament
Professional Footballers Association
Professional Players Federation
Rugby Players Association
Saffery Champness
Smith & Williamson
Sport and Recreation Alliance