Tax treatment of income from sporting testimonials

Employment Tax

01 October 2015

The proposed exemption for income arising

In August 2014 HMRC undertook an informal consultation on withdrawing their guidance in the Employment Income Manual at paragraph 64120 that in some circumstances the proceeds of a sports testimonial are not to be treated as general earnings of the individual. CIOT submitted representations saying that HMRC should not simply withdraw the guidance. In November 2014 HMRC published a formal consultation on withdrawing it and replacing it with more comprehensive guidance that set out HMRC's view of the current statutory position: that all income arising from sporting testimonial matches is taxable.

The ATT and CIOT responded, objecting to a withdrawal of the guidance and to the end of the arguably concessionary treatment.

On 8 July 2015, HMRC published a consultation containing options to mitigate the impact of bringing the tax treatment of income arising from testimonials or benefit matches in line with the current statutory position. We were specifically asked to consider:

- the introduction of an exemption;
- the frequency of that exemption;
- whether the exemption should have an upper limit;
- whether independent testimonial committees should be treated as the legal employer if the committee pays over the testimonial sum and is required to deduct PAYE; and
- any other options for reform.

Our responses welcomed the introduction of a statutory exemption. The ATT reiterated its view that genuine voluntary payments from the public to someone who retires early from a career due to injury or ill health should continue to be exempt from tax. The ATT has therefore urged HMRC to consider identifying cases of genuine exemptions from income tax liability, suggesting that there could be comparable legislation to that on termination payments. It was noted that there are exceptions from the tax chargeable under ITEPA 2003 s 401, which are separate from the operation of the statutory £30,000 exemption.

The CIOT suggested that for simplicity any exemption for income arising from testimonials might align with the £30,000 exemption for termination payments. The ATT has not specified an upper limit for the exemption, instead suggesting that HMRC research the usual level of testimonial payments made by lower-level clubs to determine a suitable threshold so that the majority of these payments can be exempted.

The CIOT takes the view that the exemption should apply per employment rather than per individual because it would be too complex to track payments over the lifetime of a sportsperson. The ATT, however, reasons that the exemption should be applied on a lifetime basis to replicate the traditional way testimonials are paid – that is, they are generally true ‘one-off’ events paid on retirement. Both agree that where a testimonial ‘season’ straddles tax years the exemption should apply cumulatively.

The consultation document states that the intention is not to change the general corporation tax position of an independent testimonial committee. HMRC’s view is that a committee considered to be trading is liable to corporation tax on profits from the testimonial. HMRC acknowledge the double taxation issue that may arise, however, as a result of the testimonial committee being unable to deduct the amount paid to the individual in calculating the profits because it is not that person’s employer, even if it is required to operate PAYE as a result of the payment being employment income of the individual. To alleviate this, HMRC suggested that the testimonial committee could be deemed to be the employer.

However, in our view, the ramifications of making the committee the employer have not been thought through. For example, being an employer brings with it obligations such as auto-enrolment obligations, holidays and other entitlements, as well as the right to deduct payments to employees. Our responses suggested that a better and

simpler approach would be to legislate that, although the testimonial committee is not the legal employer, it can deduct amounts paid (and any PAYE) when calculating its corporation tax position.

Finally, the consultation document mentions the tax treatment of testimonial income given to a charity and advises that, in effect, this is exempted either through the gift aid or payroll giving provisions. For many high-profile sportspeople a testimonial is set up purely for charitable purposes, in which case the committee would be expected to gift aid payments direct to charities.

In other cases the sportsperson may choose to donate some or all of the income to charity, perhaps through payroll giving. What is unclear is the position on NICs. The CIOT suggests that matters are clarified in legislation to ensure that, if an individual elects for income to be given to a charity, no residual PAYE or NICs liability arises.

Our full responses can be found on the CIOT website and the ATT website.