Legislating for extra statutory concessions (ESCs) A4 and A10

Technical

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ESC A4: travelling expenses of directors

The draft legislation enacts parts (a), (b) and (c) of ESC A4. In its response, the CIOT notes that various definitions and conditions will need clarifying for the legislation to work as intended.

(a) Travel by unpaid directors of not-for-profit companies

The definition of a 'not-for-profit company' appears to invalidate the exemption where the company's constitution provides either for surplus cash to be 'donated' to good causes, or for the assets to be distributed to other not-for-profit companies in the event the company is wound up or dissolved.

(b) Travel where the directorship is held as part of trade or profession

The exemption applies if the travel expenses would be deductible under ITTOIA 2005 but no such claim is to be made. Clarification is being sought to confirm that travel expenses that are paid directly by the employer can be included, that is where the director has not personally incurred an expense on which a deduction in the trade or profession can be claimed, but would have done so if the employer had not directly met the expense.

(c) Travel between linked employments

The condition requiring company Y to appoint the individual as director of company X would not seem to be compatible with requirements under company law. In addition, clarification is needed as to when duties at the place of departure need to have been carried out in order for relief to apply to a journey from there.

(d) Precarious health and accompanying spouse

In addition to comments on parts (a)–(c) of the concession, the ATT's response also covers part (d) of the concession. HMRC consider that part (d) does not need to be legislated for, as the attendance of the spouse or partner 'will be necessary for the proper performance of the director's duties, and the expenses will be covered by the existing legislation in section 338 ITEPA'. The ATT queries whether this approach to the scope of section 338 would be upheld by the courts and recommends that, to avoid uncertainty, this part of the concession be codified as well.

ESC A10: lump sums paid under overseas pension schemes

ESC A10 provides concessionary relief from taxation on a lump sum relevant benefit received from an overseas pension scheme, where some or all of the lump sum relates to foreign service.

Although largely withdrawn in March 2011, ESC A10 has been retained for payments of lump sum relevant benefits:

- where the rights to receive the lump sum accrued before 6 April 2011; or
- where received directly from the employer.

A distinction is made between EFRBS involving a third party and EFRBS where payment is made direct by the employer. Where the provision of a lump sum relevant benefit involves a third party, periods of reckonable service or foreign service after 5 April 2011 are not taken into account. The draft legislation, however, does not appear to limit periods of reckonable and foreign service in this way for payments involving a third party.