



Chartered  
Institute of  
Taxation

Excellence in Taxation

## **Extra-statutory concessions – sixth technical consultation on draft legislation Response by the Chartered Institute of Taxation**

### **1 Introduction**

- 1.1 The Chartered Institute of Taxation (CIOT) sets out below its comments on the consultation document published on 21 December 2012.
- 1.2 The consultation proposes draft legislation to enact two Extra-Statutory Concessions (ESCs):
  - ESC A4 (Travelling expenses of directors); and
  - ESC A10 (Lump sums paid under overseas pension schemes).

### **2 Executive summary**

#### **2.1 ESC A4**

The draft legislation enacts parts (a), (b) and (c) of the existing concession but there are various definitions and conditions that we think will need clarifying for the legislation to work as intended.

#### **2.2 ESC A10**

Although the consultation document (and 31 March 2011 announcement<sup>1</sup> partially withdrawing ESC A10) explains that relief will only be available for relevant benefits accrued up to 5 April 2011 (in certain circumstances) it is not apparent that the legislation limits periods of reckonable and foreign service in this way.

---

<sup>1</sup> <http://www.hmrc.gov.uk/budget-updates/march2011/pensions-esc-a10a11.pdf>

**3 ESC A4**

**3.1 Section 241A – Travel by unpaid directors of not-for-profit companies**

The draft legislation defines a ‘not-for-profit company’ as:

‘a company whose constitution requires any surplus income or gains to be reinvested in the company and does not permit any distribution of company assets, in cash or in kind, to members or third parties.’

3.2 It is not unusual for not-for-profit companies (for example a charity) to make awards of cash etc to deserving causes. Equally a charity may merge with another, with the result that the cash and other assets are transferred, or a not-for-profit company (eg the ‘manager’ of a sports hall) may be wound up and the surplus cash and other assets transferred to a new not-for-profit company.

3.3 If such circumstances arise, or the company’s constitution provides for either 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, this would seem to invalidate the exemption for unpaid directors travel expenses.

3.4 Do HMRC believe that the proposed definition will permit the exemption to be applied where the not-for-profit company distributes surplus cash or assets to good causes or transfers assets on being dissolved or wound up to another not-for-profit company?

3.5 We suggest that to put the matter beyond doubt the definition should be amended so that where the constitution permits cash or other assets to be given or transferred to other not-for-profit companies the exemption is maintained. Otherwise, if the definition is not changed then the above point will need clarifying in guidance.

**3.6 Section 241B – Travel where directorship held as part of trade or profession**

The draft legislation provides an exemption for sums paid by a company to pay or reimburse travel expenses. Condition D is that the exemption only applies if the travel expenses would be deductible under ITTOIA 2005 (but that no such claim is to be made).

3.7 Where the travel expenses have been paid directly by the company the director has not personally incurred an expense on which a deduction in his or her trade or profession can be claimed. Can HMRC confirm that the exemption will apply in such circumstances, as the self-employed or partnership business would have incurred the expense (and thus been able to make a claim for a deduction under ITTOIA 2005) had it not been paid directly by the company.

**3.8 Section 340A – Travel between linked employments**

The draft legislation (Condition E) requires that:

‘(a) the employee’s appointment as a director of company X was made by company Y or by a company in the same group as company Y, and  
(b) the right to make that appointment exists because company Y or a company in the same group as company Y has a shareholding or other financial interest in company X.’

- 3.9 The appointment of a director of company X would in general be made by the shareholders (members) of company X (or, if the Articles of Association permit, by the existing directors) (albeit company Y may have a right to ensure that their employee is appointed).
- 3.10 Consequently, we think that Condition E may need to be amended, as although company Y (or a company in the same group as Y) may have a right to ensure their employee is appointed company Y cannot make the appointment.
- 3.11 In addition, we think that Condition C requires clarification as to when the duties at the place of departure need to have been carried out in order for the relief to apply for a journey to the destination.
- 3.12 At the moment, Condition C could be interpreted as any duties having been performed at the place of departure at any time prior (including on a previous day) to the departure to the destination. The current wording could therefore be interpreted as allowing relief for a journey from home to the destination provided duties had been carried out sometime previously but not necessarily on the same day. Is this the intention?
- 3.13 It is also not clear when duties at the destination are required to be performed in the context of a return journey from that destination. Was the relief only intended to apply to a journey back to the first workplace? As above, the wording could be interpreted as allowing relief for a journey from the second workplace back home.
- 3.14 If it is intended to allow relief for journeys to and from home, then what is the purpose of section 340A(4)?
- 3.15 *ESC A4 Part(d)*

We would endorse the comments in the ATT's submission in regard to legislating for part (d) of ESC A4, in order to put the matter beyond doubt.

#### 4 **ESC A10**

- 4.1 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.

#### 4.2 *Section 395B – Exemption or reduction for foreign service*

Section 395B(1) indicates that Employer-Financed Retirement Benefits Schemes (EFRBS) should be 'established in a country or territory outside the UK'. It is not however clear what an overseas EFRBS means in this context where a scheme is unfunded. Is the location of an unfunded retirement benefits scheme relevant?

- 4.3 We assume that HMRC's intention is that unfunded schemes will continue to be covered by the same principles that applied under ESC A10. We also assume the

determining factor will be the fulfilment of the foreign service criteria performed by the employee (either in full or in part) but would appreciate HMRC clarifying this point in guidance.

#### 4.4 *Third party v direct payments*

We note that no distinction is made in the legislation between EFRBS involving a third party and EFRBS where payment is made direct by the employer. ESC A10 is applied differently in the two cases (this is noted in the consultation document).

4.5 Section 395B refers to 'reckonable service' and 'foreign service', and the consultation document states that 'periods of reckonable service or foreign service after 5 April 2011 will not be taken into account' (where the provision of a lump sum relevant benefit involves a third party and, thus, is a relevant step by a relevant third party, as defined by ITEPA 2003, Part 7A).

4.6 The draft legislation however makes no adjustment for post 5 April 2011 service. We think this is correct for schemes where the employer makes the payment direct to the individual employee, rather than via a third party. However, if the intention is to exclude post-April 2011 service where a Part 7A charge was relevant, we believe that it will be necessary to adjust the definitions of foreign and reckonable service to exclude those years where a Part 7A charge has previously arisen.

#### 4.7 *Section 414A – Exception for payments and benefits under section 615(3) schemes*

The point above regarding the April 2011 cut-off also applies with regard to section 414A and 'section 615 trust' schemes.

## 5 **The Chartered Institute of Taxation**

5.1 The CIOT is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT's comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

The CIOT's 16,500 members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

The Chartered Institute of Taxation  
15 March 2013