

Draft Order laid before the House of Commons under section 160(7) of the Finance Act 2008, for approval by resolution of that House.

DRAFT STATUTORY INSTRUMENTS

2018 No. XXXX

CORPORATION TAX

INCOME TAX

The Enactment of Extra-Statutory Concessions Order 2018

Made - - - - *****
Coming into force - - *6th April 2018*

The Treasury make the following Order in exercise of the powers conferred by section 160 of the Finance Act 2008⁽¹⁾.

In accordance with section 160(7) of that Act, a draft of this instrument was laid before the House of Commons and approved by resolution of that House.

Citation and commencement

1. This Order may be cited as the Enactment of Extra-Statutory Concessions Order 2018 and comes into force on 6th April 2018.

Compensation for financial loss of voluntary office-holders and volunteers: income tax

2.—(1) Chapter 8 of Part 4 of the Income Tax (Earnings and Pensions) Act 2003⁽²⁾ (exemptions: special kinds of employees) is amended as follows.

(2) After section 299 (Crown employees' foreign service allowances) insert—

“Voluntary office-holders

299A Voluntary office-holders: compensation for lost employment income

(1) No liability to income tax arises in respect of a payment made by a relevant authority to a person if—

(a) the person holds a voluntary office with the authority,

(1) 2008 c. 9.
(2) 2003 c. 1.

- (b) the person carries out duties of the office in a period in which he or she is also employed, and
 - (c) the payment is made solely to compensate the person for lost employment income for the period (and accordingly does not exceed the amount of that income).
- (2) For the purposes of subsection (1) a person holds a voluntary office if, at the time the payment referred to in that subsection is made, the person—
- (a) is not entitled to any payment or benefit in connection with carrying out the duties of the office,
 - (b) has not received any such payment or benefit, and
 - (c) does not expect to receive any such payment or benefit.
- (3) For the purposes of subsection (2)(a), (b) and (c) disregard—
- (a) a payment in respect of reasonable expenses incurred in carrying out the duties of the office, and
 - (b) a payment to which subsection (1) or section 16A of ITTOIA 2005 applies.
- (4) In subsection (1)(c) “lost employment income” means the difference between—
- (a) the amount of employment income, after deduction of tax and national insurance contributions, that the person would have received from the employment for the period if he or she had not carried out the duties of the office, and
 - (b) the amount of employment income, after deduction of tax and national insurance contributions, that the person did receive from the employment for the period.
- (5) In subsection (1) “relevant authority” means any of the following—

Government

A government department

The Welsh Ministers and the Counsel General to the Welsh Government

The Scottish Ministers

The holder of an office in the Scottish Administration which, for the purposes of the Scotland Act 1998, is not a ministerial office (see section 126(8) of that Act)

A Northern Ireland department

Local government

A county, district or parish council in England

The council of a London borough

The Common Council of the City of London

The Greater London Authority

The Council of the Isles of Scilly

A county, county borough or community council in Wales

A council constituted under section 2 of the Local Government etc. (Scotland) Act 1994⁽³⁾ or community council in Scotland

A district council in Northern Ireland

Trade unions

An organisation the name of which is entered in the list maintained by the Certification Officer under section 2 of the Trade Union and Labour Relations (Consolidation) Act 1992⁽⁴⁾

⁽³⁾ 1994 c. 39.

⁽⁴⁾ 1992 c. 52.

An organisation the name of which is entered in the list maintained by the Certification Officer for Northern Ireland under Article 5 of the Industrial Relations (Northern Ireland) Order 1992 (S.I. 1992/807 (N.I. 5))

Local medical committees

A Local Medical Committee (see section 97(4) of the National Health Service Act 2006(5))

Other public bodies

A body (other than a company) that is established by or under a statutory provision for the purpose of carrying out functions conferred on it by or under a statutory provision.

(6) In this section—

“company” means a company as defined by section 1 of the Companies Act 2006(6);

references to a relevant authority include a company the activities of which consist solely of carrying out some or all of the functions of that authority, otherwise than for profit;

“statutory provision” includes any provision made by or under an Act of Parliament, an Act of the Scottish Parliament, any Northern Ireland legislation, or any Act or Measure of the National Assembly for Wales.

(7) Section 16A of ITTOIA 2005 (voluntary office-holders: compensation for lost profits) contains equivalent provision for holders of a voluntary office who carry on a trade, profession or vocation.”

3.—(1) The Income Tax (Trading and Other Income) Act 2005(7) is amended as follows.

(2) In Part 1, in section 2(4) for “is one example” substitute “and sections 16A (voluntary office-holders: compensation for lost profits), 16B (payments to company directors) and 16C (professionals in practice: incidental income from an office or employment) of this Act are each an example”.

(3) In Chapter 2 of Part 2, after section 16 (oil extraction and related activities) insert—

“16A Voluntary office-holders: compensation for lost profits

(1) This section applies if a payment is made by a relevant authority to a person where—

- (a) the person holds a voluntary office with the authority,
- (b) the person carries out the duties of the office in a period in which he or she also carries on a trade, profession or vocation,
- (c) the payment is made solely to compensate the person for lost profits for the period (and accordingly does not exceed the amount of those profits), and
- (d) the payment would otherwise be dealt with under Part 2 of ITEPA 2003 by virtue of section 4(2)(b).

(2) The payment is dealt with under this Part.

(3) In subsection (1)(c) “lost profits” means the difference between—

- (a) the amount of profits that the person would have received from the trade, profession or vocation for the period if he or she had not carried out the duties of the office, and
- (b) the amount of profits that the person did receive from the trade, profession or vocation for the period.

(4) For the purposes of subsection (1)—

“relevant authority” has the meaning given by section 299A of ITEPA 2003;

(5) 2006 c. 41. Section 97 was amended by paragraph 41 of Schedule 4 to the Health and Social Care Act 2012 (c. 7).

(6) 2006 c. 46.

(7) 2005 c. 5.

references to a person holding a voluntary office are to be construed in accordance with section 299A(2) and (3) of that Act.”

(4) In Chapter 9 of Part 6, after section 782B (renewables obligation certificates for domestic microgeneration) insert—

“782C Volunteers etc: compensation for lost employment income

(1) No liability to income tax arises in respect of a payment by a relevant authority to a person if—

- (a) the person performs services for the authority for no financial benefit in a period in which he or she is also employed,
- (b) the payment is made solely to compensate the person for lost employment income for the period (and accordingly does not exceed the amount of that income), and
- (c) the person does not perform the services as the holder of an office with the authority (as to which, see section 299A of ITEPA 2003).

(2) For the purposes of subsection (1) a person performs services for no financial benefit if, at the time the payment referred to in that subsection is made, the person—

- (a) is not entitled to any payment or benefit in connection with performing the services,
- (b) has not received any such payment or benefit, and
- (c) does not expect to receive any such payment or benefit.

(3) For the purposes of subsection (2)(a), (b) and (c) disregard—

- (a) a payment in respect of reasonable expenses incurred in performing the services,
- (b) a payment compensating the person for loss of social security income arising as a result of performing the services, and
- (c) a payment to which subsection (1) applies.

(4) In subsection (1)(b) “lost employment income” means the difference between—

- (a) the amount of employment income, after deduction of tax and national insurance contributions, that the person would have received from the employment for the period if he or she had not performed the services, and
- (b) the amount of employment income, after deduction of tax and national insurance contributions, that the person did receive from the employment for the period.

(5) In this section—

“employment” has the meaning given by section 4 of ITEPA 2003;

“relevant authority” has the meaning given by section 299A of ITEPA 2003;

“services” includes services as a juror;

“social security income” has the meaning given by section 657 of ITEPA 2003.”

Income of company directors and professionals in practice: income tax

4.—(1) Chapter 2 of Part 2 of the Income Tax (Earnings and Pensions) Act 2003⁽⁸⁾ (tax on employment income) is amended as follows.

(2) In section 6(5) (nature of charge to tax on employment income) for “Part 2” to the end substitute—

(8) 2003 c. 1.

- “(a) Part 2 of ITTOIA 2005 (trading income) by virtue of section 15 (divers and diving supervisors), 16A (voluntary office-holders: compensation for lost profits), 16B (payments to company directors) or 16C (professionals in practice: incidental income from an office or employment) of that Act, or
- (b) Part 3 of CTA 2009 (trading income) by virtue of section 40A (payments to company directors) or 40B (professionals in practice: incidental income from an office or employment) of that Act.”.

5.—(1) The Income Tax (Trading and Other Income) Act 2005⁽⁹⁾ is amended as follows.

(2) In Chapter 2 of Part 2, after section 16A (voluntary office-holders: compensation for lost profits)⁽¹⁰⁾ insert—

“Payments to company directors

16B.—(1) This section applies where—

- (a) a company (“the paying company”) makes a payment to, or for the benefit of, a director of the paying company in respect of the director’s employment as a director of the paying company,
 - (b) the payment would otherwise be employment income of the director chargeable to tax under Part 2 of ITEPA 2003,
 - (c) the director was or is a member of a firm, or was appointed by a company (“the appointing company”) other than the paying company, and
 - (d) condition A or B is met.
- (2) The payment is to be treated for income tax purposes as a receipt of—
- (a) a trade carried on by the firm, or
 - (b) a trade carried on by the appointing company.
- (3) Condition A applies where the director is a member of a firm, and is that—
- (a) the director carries on a profession,
 - (b) being a director of a company is a normal incident of that profession and of membership of the firm,
 - (c) the director is required by the terms of the partnership agreement to account to the firm for the payment, and
 - (d) the amount of the payment is insubstantial, compared with the total amount brought into account as receipts when calculating the firm’s profits.
- (4) Condition B applies where the director is appointed by a company, and is that—
- (a) the profits of the appointing company are within the charge to income tax,
 - (b) by virtue of an agreement with the appointing company, the director is required to account for the payment to that company, and
 - (c) either subsection (5) or subsection (6) applies to the appointing company.
- (5) This subsection applies if the appointing company had the right to appoint the director by virtue of its shareholding in, or an agreement with, the paying company.
- (6) This subsection applies if the appointing company is not one over which—
- (a) the director has control, or

⁽⁹⁾ 2005 c. 5.

⁽¹⁰⁾ Section 16A is inserted by article 3(3) of this Order.

- (b) any person connected with the director has control, or
- (c) the director and any persons connected with him together have control.

(7) For the purposes of subsection (6), the following persons are connected with the director: the spouse, civil partner, parent, child, son-in-law or daughter-in-law of the director.

Professionals in practice: incidental income from an office or employment

16C.—(1) This section applies where—

- (a) a payment is received by an individual who carries on a profession (alone or in partnership),
- (b) the payment is made to the individual in his or her capacity as an employee or office-holder, but is not made in respect of employment as a director of a company,
- (c) the payment would otherwise be employment income of the individual chargeable to tax under Part 2 of ITEPA 2003,
- (d) the conditions in subsection (3) are met, and
- (e) where the individual carries on the profession in partnership, the condition in subsection (4) is also met.

(2) The payment is to be treated for income tax purposes as a receipt of a trade carried on by the individual or, where the individual carries on the profession in partnership, by the firm.

(3) The conditions referred to in subsection (1)(d) are that—

- (a) the time spent by the individual in performing the duties of the office or employment is insubstantial compared with the time spent by the individual in carrying on the profession,
- (b) the office or employment is related to the profession carried on by the individual,
- (c) the amount of the payment is insubstantial compared with—
 - (i) the total amount brought into account as receipts when calculating the individual's trade profits; or
 - (ii) where the individual carries on a profession in partnership, so much of the total amount brought into account as receipts when calculating the firm's profits as is attributable to the individual.

(4) The condition referred to in subsection (1)(e) is that the individual is required by the terms of the partnership agreement to account to the firm for the payment and does so.”

Income of company directors and professionals in practice: corporation tax

6.—(1) The Corporation Tax Act 2009(11) is amended as follows.

(2) In Chapter 2 of Part 3, after section 40 (credit unions) insert—

“Payments to company directors

40A.—(1) This section applies where—

- (a) a company (“the paying company”) makes a payment to, or for the benefit of, a director of the paying company in respect of the director's employment as a director of the paying company,

- (b) the payment would otherwise be employment income of the director chargeable to tax under Part 2 of ITEPA 2003,
 - (c) the director was or is a member of a firm, or was appointed by a company (“the appointing company”) other than the paying company, and
 - (d) condition A or B is met.
- (2) The payment is to be treated for corporation tax purposes as a receipt of—
- (a) a trade carried on by the firm, or
 - (b) a trade carried on by the appointing company.
- (3) Condition A applies where the director is a member of a firm, and is that—
- (a) the director carries on a profession,
 - (b) being a director of a company is a normal incident of that profession and of membership of the firm,
 - (c) the director is required by the terms of the partnership agreement to account to the firm for the payment, and
 - (d) the amount of the payment is insubstantial, compared with the total amount brought into account as receipts when calculating the firm’s profits.
- (4) Condition B applies where the director is appointed by a company, and is that—
- (a) the profits of the appointing company are within the charge to corporation tax,
 - (b) by virtue of an agreement with the appointing company, the director is required to account for the payment to that company, and
 - (c) either subsection (5) or subsection (6) applies to the appointing company.
- (5) This subsection applies if the appointing company had the right to appoint the director by virtue of its shareholding in, or an agreement with, the paying company.
- (6) This subsection applies if the appointing company is not one over which—
- (a) the director has control, or
 - (b) any person connected with the director has control, or
 - (c) the director and any persons connected with him together have control.
- (7) For the purposes of subsection (6) the following persons are connected with the director: the spouse, civil partner, parent, child, son-in-law or daughter-in-law of the director.

Professionals in practice: incidental income from an office or employment

- 40B.**—(1) This section applies where—
- (a) a payment is received by an individual who carries on a profession in partnership,
 - (b) the payment is made to the individual in his or her capacity as an employee or office-holder, but is not made in respect of employment as a director of a company,
 - (c) the payment would otherwise be employment income of the individual chargeable to tax under Part 2 of ITEPA 2003, and
 - (d) the conditions in subsection (3) are met.
- (2) The payment is to be treated for corporation tax purposes as a receipt of a trade carried on by the firm.
- (3) The conditions referred to in subsection (1)(d) are that—

- (a) the time spent by the individual in performing the duties of the office or employment is insubstantial compared with the time spent by the individual in carrying on the profession,
- (b) the office or employment is related to the profession carried on by the individual,
- (c) the amount of the payment is insubstantial compared with so much of the total amount brought into account as receipts when calculating the firm's profits as is attributable to the individual, and
- (d) the individual is required by the terms of the partnership agreement to account to the firm for the payment and does so.”.

Date

Name
Name
Two of the Lords Commissioners of Her
Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under section 160 of the Finance Act 2008 (c. 9) and enacts three existing HMRC extra-statutory concessions (“ESCs”). It comes into force on 1st April 2018.

Articles 2 and 3 enact ESC EIM01120.

Article 2 inserts section 299A of the Income Tax (Earnings and Pensions) Act 2003 (“ITEPA”). New section 299A creates a new income tax exemption for payments of financial loss allowance (“FLA”) to holders of an unpaid office with certain public bodies (defined in section 299A as “relevant authorities”) to compensate them for lost employment income as a result of performing the duties of the office. The exemption applies only if the office-holder is not entitled to, has not received and does not expect to receive any remuneration for performing the duties of the office, and provided that the payment does not exceed the net amount of employment income that the office-holder would otherwise have received. The definition of a “relevant authority” is broad and includes central or local government bodies, bodies established by or under a statutory provision, Local Medical Committees, trade unions and companies that carry out the functions of a relevant authority.

Article 3 inserts new sections 16A and 782C into the Income Tax (Trading and Other Income) Act 2005 (“ITTOIA”).

New section 16A ITTOIA disapplies the priority rules in Part 1 ITTOIA in their application to FLA payments to holders of an unpaid office with a relevant authority to compensate them for lost income from a trade, profession or vocation as a result of performing the duties of that office. Where it applies, it requires the FLA to be treated as income arising to the office-holder from the trade, profession or vocation, instead of as income arising from the office.

New section 782C ITTOIA creates a new income tax exemption for payments of FLA to an individuals who perform unpaid services for a relevant authority to compensate them for lost employment income as a result of doing so. The exemption is subject to near-identical conditions to section 299A ITEPA.

Articles 4, 5 and 6 enact ESCs A37 and EIM03002.

Article 4 amends section 6(5) of ITEPA. The effect of this amendment is that employment income is not charged to income tax under Part 2 of ITEPA if it is within the charge to tax under Part 2 of ITTOIA by virtue of new sections 16B and 16C of ITTOIA or under Part 3 of the Corporation Tax Act 2009 (“CTA”) (c. 4) by virtue of new sections 40A and 40B of the CTA.

Article 5 inserts new sections 16B and 16C into ITTOIA.

In particular new section 16B of ITTOIA enables certain payments received by directors of companies or partnerships to be treated as trading income rather than employment income for income tax purposes provided that the conditions specified in new section 16B(3) and (4) of ITTOIA are met.

New section 16C of ITTOIA enables certain payments received by professional practitioners by way of incidental income from an office or employment to be treated as trading income rather than employment income for income tax purposes provided that the conditions specified in section 16C(3) and (4) of ITTOIA are met.

Article 6 inserts new sections 40A and 40B into CTA.

In particular new section 40A of CTA enables certain payments received by directors of companies or partnerships to be treated as trading income rather than employment income for corporation tax purposes provided that the conditions specified in new section 40A(3) and (4) of CTA are met.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: The Enactment of Extra-Statutory Concessions Order 2018 No. 282

New section 40B of CTA enables certain payments received by professional practitioners in partnership by way of incidental income from an office or employment to be treated as trading income rather than employment income for corporation tax purposes provided that the conditions specified in section 40B(3) of CTA are met.

A Tax Information and Impact Note has not been prepared for this Instrument as it contains no substantive changes to tax policy.