STATUTORY INSTRUMENTS

# 2018 No. 282

# CORPORATION TAX
# INCOME TAX

## The Enactment of Extra-Statutory Concessions Order 2018

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| *Made - - - -* | *1st March 2018* |
| *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*

**Voluntary office-holders: compensation for lost employment income**

**299A.**—(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,

(b) the person carries out duties of the office in a period in which he or she is also employed, and

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

(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—

"**Voluntary office-holders: compensation for lost profits**

**16A.**—(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)—

(**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.

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

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—

"**Volunteers etc: compensation for lost employment income**

**782C.**—(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.