



## FIELD COURT TAX CHAMBERS

### **Waiving Remuneration<sup>1</sup>**

A number of public spirited people have generously announced that they will be waiving some or all of their salaries in an effort to assist those who are badly affected by the current Covid-19 crisis – or to provide additional funds to the NHS. Those with a high profile have naturally received a lot of media attention but there are a lot of other people whose generosity is equally praiseworthy.

However, it is an inevitable feature of modern life that anybody wishing to help in this way must be very careful not to expose themselves to some seriously unwelcome tax consequences as a result of their generosity.

The general rule is that if a salary or bonus is waived after entitlement to it has arisen, the donor will still be liable to tax and NIC on the amount waived. The waiver will still be valid but it will be a disposition of the amount received (or treated by ITEPA 2003 as received), rather than the relinquishment of amounts they were expecting to receive – which would no doubt have been intended.

Under the circumstances, that would probably not go down well with the donor. To avoid such a surprise it is necessary for the employee to execute the waiver before the entitlement to the salary or bonus has arisen. In this way, he will not be chargeable to tax on the amount waived.

It is also of course essential that the documentation has the desired legal effect – and as a waiver is a gratuitous disposition without consideration, it will require a deed to be executed in proper form.

We might expect that HMRC will adopt a flexible approach here as they have done in other areas, but there is a limit to how much it can disregard the legal position – and still less the statutory provisions. Maybe there could be a legislative change which will deal with any such problems, but the Treasury (and Parliament) may have enough on their plate at the moment without having to deal with all this technical stuff.

And what about the position where an employee repays a bonus that he has recently received in order to assist in meeting the costs of his furloughed employees. I am sure a lot of that has been going on. No relief at all at the moment – in fact it is really the same point – and the repayment will have to be made out of post-tax income. Perhaps HMRC will come to the rescue here and cause the repayment as negative earnings.

Inheritance tax should not be an issue because an exemption exists for waivers of remuneration under IHTA 1984 s 14. This applies if, apart from the waiver, the amount waived would have been employment income. This wording indicates that, for similar reasons, it would be necessary for the waiver to be executed in advance of the entitlement arising.

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It is understood that the CIOT is on the case and are seeking some confirmation from HMRC that they will find a way to protect donors from the severity of these consequences. After all, nobody would want such generosity of spirit (or of cash) to be discouraged by uncertainty over the tax position.

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