



Withdrawal of extra statutory concessions

Technical note and call for evidence
6 December 2011

Who should read this document?

Anyone who may be affected by the withdrawals of certain non-statutory tax reliefs set out at chapter 2. This includes large and small businesses, employers, individuals and the bodies that represent all of the above.

Making your views heard

We are keen to gather evidence from those who have relevant data about the potential impact of withdrawal of the tax reliefs detailed in this note. Data on the number and types of users of the tax reliefs, including from any bodies who may have undertaken research in the area or represent significant numbers of those affected, is particularly welcome.

Data is requested by 30 November 2012 to ensure it receives full consideration. However it may be possible to take into account data received after that time.

Phone enquiries

Emma Cartledge on 020 7147 2417

Email

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In writing

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Your details

Representative groups may wish to give a summary of the people and organisations they represent and, where relevant, how they consulted in reaching their conclusions. You may wish to include contact details for follow-up (for example, name, phone number, email address).

Confidentiality

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If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Revenue & Customs (HMRC).

HMRC will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Contents		Page
Introduction		4
Chapter 1	Background	5
Chapter 2	Extra statutory concessions to be withdrawn	7
Chapter 3	Interim tax impact assessment	12

Introduction

The House of Lords' decision in the *Wilkinson*¹ case clarified the scope of HMRC's administrative discretion to make concessions that depart from the strict statutory position. HMRC is therefore reviewing its concessions. Although it is likely that the majority can remain as they are, some are considered to be beyond the scope of HMRC's discretion. Of these, some can be legislated to preserve their effect; others will need to be withdrawn. This document provides details of five extra-statutory concessions that need to be withdrawn as part of the review and gives notice of their withdrawal with effect from the beginning of the 2013-14 tax year.

This document also sets out HMRC's interim assessment of the potential impact of the withdrawals. Further data to assist HMRC in its assessment is welcome to ensure we fully understand what impact the withdrawals may have. HMRC's impact assessment is set out in chapter 3.

¹ [R v HM Commissioners of Inland Revenue ex p Wilkinson \[2005\] UKHL 30](#)

Chapter 1 – background

1.1 Extra-statutory concessions (ESCs) have been a feature of the UK’s tax system for decades and will continue to be made and withdrawn as necessary. For this purpose the term ‘extra-statutory concession’ refers to any stated concession from the statutory tax treatment. It is not limited to concessions published in the former Inland Revenue booklet IR1² and the former HM Customs and Excise booklet Notice 48³.

1.2 The House of Lords’ decision in the *Wilkinson* case clarified the scope of HMRC’s administrative discretion to make concessions that depart from the strict statutory position.

1.3 In light of that decision, HMRC is reviewing its concessions. The indications are that most ESCs will be able to continue in their current form as they are within the scope of HMRC’s administrative discretion. Where an existing concession exceeds the scope of HMRC’s discretion the effect of the concession will be maintained by giving it statutory effect where it is appropriate to do so. To date five consultations have been published seeking comments on such legislation, the latest published alongside this document on 6 December 2011.

1.4 Where it is not possible or appropriate to give statutory effect to a concession which exceeds the scope of HMRC’s discretion it will need to be withdrawn. HMRC has identified five more concessions that need to be withdrawn. Since these concessions relate to income tax withdrawal will take effect from the beginning of the 2013-14 tax year, so allowing at least a full year’s notice. A list of the concessions to be withdrawn can be found below, with more details in chapter 2.

1.5 Where an ESC has to be withdrawn, HMRC recognise that taxpayers may have to make adjustments, and will generally offer an appropriate period of notice before the concessionary treatment formally comes to an end. The length of this period may vary between ESCs, but HMRC will aim to allow a period of time that is sufficient for the necessary adjustments to be made. No ESC will be withdrawn retrospectively.

1.6 Chapter 3 sets out HMRC’s interim assessment of the potential impact of the withdrawals. Further data to assist HMRC in fully understanding the impact the withdrawals may have would be welcome.

² [Former Inland Revenue booklet IR1](#)

³ [Public Notice 48](#)

1.7 For general queries on HMRC's review of ESCs, please contact Emma Cartledge. Contact details are provided at page 2 above. For queries related to specific concessions, please use the contact named for each concession, below.

Extra-statutory concession to be withdrawn	Tax/Duty	Page
A12: Double taxation relief: alimony, etc under United Kingdom court order or agreement: payer resident abroad	Income Tax	7
BIM46935: Renewals allowances for capital expenditure on plant and machinery	Income Tax and Corporation Tax	8
B49: Section 532 Capital Allowances Act 2001: Grants repaid	Income Tax and Corporation Tax	9
EIM23470: Company cars for disabled drivers without blue badges	Income Tax	10
Filing extension for form P11D(b)	Income Tax	11

Chapter 2 – extra statutory concessions to be withdrawn

A12: Double taxation relief: alimony, etc under United Kingdom court order or agreement: payer resident abroad

By concession, double taxation relief is allowed to be claimed by a UK resident in respect of alimony paid by a non-resident person under a UK court order. Alimony has not been taxable since 6 April 2000 and so the ESC will be withdrawn in respect of returns made for tax years commencing on or after 6 April 2013.

Background

The practice (set out in the International Manual at INTM161130) affected the amount of double taxation relief that was available to the recipient of alimony paid by a non-resident from their foreign income which had suffered foreign tax but that was made under a UK court order.

When a person received alimony such payments were taxable on the recipient but where the payments were made out of taxed income, credit was allowed to the recipient for tax suffered by the payer. This included the situation where the payer was resident abroad and made the payments out of their foreign income and so relief would be given via double taxation relief for the foreign tax suffered.

However where the alimony was paid under a UK court order the source of the income for the recipient was held to be in the UK no matter where the payer was resident and whether the income used to fund the payment was from the UK or abroad. Under UK legislation relief is not due in respect of foreign tax suffered on UK source income. This meant that where the payer was resident abroad and paid the alimony out of their foreign income that had suffered foreign tax, the recipient would be liable to UK taxation but would not be able to claim double taxation relief. Unless alimony was covered in the relevant Double Taxation Treaty there would be actual double taxation. The practice therefore allowed relief where payments were made under a UK court order but by a non-resident out of their foreign income and upon which foreign tax had been suffered.

Section 36 Finance Act 1999 removed alimony from the charge to tax in respect of payments due on or after 6 April 2000. As alimony is no longer taxable there is no need to provide double taxation relief or follow this practice.

Further advice

If you have any questions about this change, please contact Andrew Parkes on 020 7147 3427 (email: [Andrew Parkes](mailto:Andrew.Parkes@hmrc.gov.uk)).

BIM46935: Renewals allowances for capital expenditure on plant and machinery

By concession, if a taxpayer incurs capital expenditure on replacing plant or machinery, the taxpayer can claim a revenue deduction for the replacement expenditure (a 'renewals allowance') for the purposes of income tax or corporation tax.

This concession will be withdrawn in relation to expenditure on replacing plant and machinery which is incurred:

- (a) on or after 6 April 2013, for the purposes of income tax; and
- (b) on or after 1 April 2013, for the purposes of corporation tax.

Background

Section 68 of the Income Tax (Trading and Other Income) Act (ITTOIA) 2005 and section 68 of the Corporation Tax Act (CTA) 2009 give a renewals allowance for the replacement of trade tools.

Concessionary renewals allowances can be claimed for expenditure on other plant and machinery, if the taxpayer agrees to the detailed conditions set out in paragraph 46935 of HMRC's 'Business Income Manual' (BIM46935). The concession was originally operated by the Inland Revenue well before the introduction of capital allowances on plant and machinery.

Taxpayers carrying on a trade or other qualifying activity are entitled to capital allowances for expenditure on plant and machinery under Part 2 of the Capital Allowances Act 2001 (CAA). In particular, they are entitled to the annual investment allowance, a 100% allowance which applies to eligible expenditure up to a cap which will be £25,000 from April 2012. The annual investment allowance largely supersedes the concession set out in BIM46935.

If the taxpayer's qualifying activity is an ordinary property business or an overseas property business Section 35(2) of CAA denies capital allowances for qualifying expenditure incurred in providing plant or machinery for use in a dwelling-house. In such cases, relief will be available either under Section 68 ITTOIA 2005/Section 68 CTA 2009 or, for furnished lettings, under the wear and tear allowance at Sections 308A to 308C ITTOIA 2005.

Further advice

If you have any questions about this change, please contact Hugh Dorey on 020 7147 3850 (email: [Hugh Dorey](mailto:Hugh.Dorey)).

B49: Section 532 Capital Allowances Act 2001: Grants repaid

By concession, capital allowances may be claimed in certain circumstances where contributions or grants relating to an asset are repaid.

This concession will be withdrawn in relation to grants and other payments that are repaid:

- (a) on or after 6 April 2013, for the purposes of income tax; and
- (b) on or after 1 April 2013, for the purposes of corporation tax.

Background

Section 532 of the Capital Allowances Act 2001 provides that taxpayers cannot ordinarily claim capital allowances on that element of their expenditure that has been funded by a:

- grant from the Government or other public body; or
- payment from another person who is entitled to claim capital allowances on the amount given.

Such payments are termed 'contributions'.

Occasionally such contributions may be repaid. This may be for a number of reasons, but usually because a condition of the contribution has been breached or triggered. In such circumstances the taxpayer is unable to claim capital allowances on the repaid contribution.

ESC B49 provides that:

- Where some or all of the expenditure on the provision of an asset has been met by a contribution from the Crown or other public body, and it is later repaid in whole or in part, the amount repaid will be treated as expenditure on which capital allowances may be claimed.
- Where a contribution has been made by a person other than the Crown or public body, who is entitled to capital allowances or a trading deduction on that amount, and it is later repaid in part or whole, the amount repaid will be treated as expenditure on which capital allowances may be given, provided the person who made the initial contribution repays any allowances claimed or reflects the repayment as a trading receipt.

It has been decided to withdraw this ESC because:

- when making the commercial decision to receive a contribution, taxpayers are in a position to take full account of the circumstances in which the contribution might have to be repaid and the business consequences that will follow;
- any implementing legislation would have to be complex, lengthy, and restrictive (to avoid creating tax planning opportunities) running counter to the Government's ambition to create a simpler tax system.

Further advice

If you have any questions about this change, please contact Nick Williams on 020 7147 2541 (email: [Nicholas Williams](mailto:Nicholas.Williams))

EIM23470 PAYE: Company cars for disabled drivers without blue badges

By concession, disabled individuals without disabled person's badges may calculate the private use benefit of their automatic company car based on the price and emissions of the equivalent manual car. This concession will be withdrawn in respect of returns made for tax years commencing on or after 6 April 2013.

Background

The provision of a company car is subject to income tax and NICs if the car is available for private use. The cash equivalent of the benefit is determined by the list price of the car and the car's CO2 emissions. Disabled company car drivers who hold a disabled person's badge (blue badge) and who need to drive an automatic car can calculate the cash equivalent of the benefit on their company car using the CO2 emissions figure of an equivalent manual car where that is more beneficial to them. This tax relief, which is provided for at Income Tax (Earnings and Pensions) Act 2003 section 138, will remain unchanged.

However, a handful of drivers with disabilities which do not entitle them to a blue badge but which mean they require an automatic car can currently also benefit from this relief. This practice, previously set out in HMRC's Employment Income Manual at paragraph 23470 (EIM23470), is outside HMRC's discretion and is therefore being withdrawn.

Further advice

If you have any questions about this change, please contact Su McLean-Tooke on 020 7147 2665 (email: [Susan Mclean-Tooke](mailto:Susan.Mclean-Tooke)).

Filing extension for form P11D(b)

By concession, HMRC does not issue penalties for late filing of P11D(b) returns provided they are received by 19 July following the end of the tax year. HMRC will withdraw this practice from 31 March 2013. P11D(b) returns filed after this date must be made by the deadline of 6 July following the end of the tax year in order to avoid penalties.

Background

The filing date for the P11D(b) return (Return of Class 1A National Insurance Contributions) is 6 July following the end of the tax year. Currently any employer who submits their P11D(b) return in time to reach HMRC by 19 July following the end of the tax year is not charged a late filing penalty. This treatment is provided for in our guidance (e.g. at paragraph 25 of leaflet CWG5 'Class 1A National Insurance contributions on benefits in kind – A guide for employers') but there is no statutory provision which allows such an extension.

Late filing penalties are calculated by reference to the number of employees provided with benefits and the lateness of the P11D(b) return. The penalty is £100 per month or part month of lateness for every 50 or part batch of 50 employees provided with benefits.

This change follows the withdrawal, on 31 March 2011, of ESC B46. B46 provided that HMRC did not issue penalties for late filing of certain returns, including the Employer Annual Return (P35 and P14s), provided they were received by the last working day within seven days of the filing date.

Any employers filing a late P11D(b) return will, as now, be able to appeal against any penalty if they believe there was a reasonable excuse for the delay in filing.

Further advice

If you have any questions about this change please contact Lynn Carroll on 020 7147 2636 (email: [Lynn Carroll](mailto:Lynn.Carroll@hmrc.gov.uk)).

Chapter 3 – interim tax impact assessment

Introduction

3.1 The nature of ESCs is that, in general, it is not necessary for taxpayers to make any formal claim to HMRC in order to make use of an ESC. This means HMRC has in many cases to estimate the extent to which they are used in practice.

3.2 The Government is improving the tax policy making process and an important aspect of this is ensuring the expected impacts of policy changes are understood throughout the policy making process.

3.3 This chapter sets out our interim assessment of the potential impacts of withdrawal of the ESCs detailed at chapter 2. Any relevant data we can gather during the withdrawal notice period, particularly from taxpayers affected or groups representing them will allow HMRC to better validate its interim assessment. A final assessment in the form of a tax information and impact note will be published nearer the time planned for the withdrawals to take effect.

3.4 The sections below consider the impact of some of the ESCs detailed in chapter 2. No impacts are anticipated in relation to A12 as our assessment is that the ESC is either not used at all or used in only an extremely small number of cases. The remainder of the ESCs are referred to below by either their number or 'P11D(b)' for 'filing extension for form P11D(b)'.

Exchequer impact

3.5 These ESCs are considered to have a negligible Exchequer impact.

3.6 In deciding to withdraw these ESCs the yield generated, being relatively small, is not a significant consideration. However, there could be a risk of a more substantial negative impact on the Exchequer if the various reliefs given by these ESCs were legislated. Legislation could provide unforeseen opportunities for avoidance in a way that concessions do not because any concessionary treatment can be refused if associated with avoidance.

Economic impact

3.7 No significant economic impacts are anticipated.

Impact on individuals and households

3.8 Although withdrawal of EIM23470 might be regarded as creating an additional company car tax burden for certain disabled drivers, our assessment is that almost all disabled company car drivers will be within the existing legislation which covers drivers holding a disabled person's badge. To the extent there may be any drivers not covered by the existing legislation our view is that creating a new statutory tax relief to cover such

drivers would open up the possibility of abuse as there would be no independent verification of the driver's ability to drive without an automatic gearbox. It would also add complexity to the current statutory regime which already works well for the very significant majority of employers and employees.

Impact on equality

3.9 Withdrawal of EIM23470 would directly affect any disabled company car drivers without a disabled person's badge. However, for the reasons given at 3.8 above withdrawal rather than legislation is still considered the best option.

3.10 No other potential equality impacts have been identified.

Impact on business including the third sector

3.11 The concessionary treatment afforded by BIM46935 is largely superseded by existing legislation. To that extent, its withdrawal is not anticipated to have any material impact. The withdrawal of the BIM46935 treatment could leave some unfurnished property businesses worse off, but this would very much depend on the facts of the case.

3.12 Withdrawal of B49 may impact on some businesses. The limited evidence suggests that private sector contributions to qualifying capital expenditure are rare, and their repayment even more uncommon. Public sector contributions, 'grants', are more common and are often focussed on regeneration projects, often to the commercial arms of Non Departmental Public Bodies, or start-ups. In both cases, repayment is only required where the recipient is in default of the terms of the contribution, or very occasionally where certain outcomes have been achieved. The overall impact of withdrawing the ESC is considered to be extremely limited.

3.13 Employers are currently allowed an extra 13 days beyond the statutory deadline to file annual returns of class 1A National Insurance Contributions before a penalty is charged. Withdrawal of the ESC and enforcement of the statutory deadline by way of penalty does not impose any additional burden on employers, as they are already obligated to file the return by the statutory date. Legislating to give effect to an extended statutory deadline would create an inconsistent filing date compared with other end of year employer returns for no good reason and conflicts with the removal of ESC B46 which provided a similar extended period for the submission of other returns. Varying dates for such returns could create confusion and therefore it is not appropriate to retain this concession through legislation.

Operational impact on HMRC

3.14 Minimal changes to HMRC guidance will be needed once the withdrawals take effect. No significant training, staffing or IT impacts are anticipated.

Other impacts

3.15 Small firms may currently benefit from the P11D(b) filing extension if they file their annual returns late. However, the penalty for late filing is intended to encourage compliance and to prevent those who do not file their returns on time from gaining a competitive advantage over the compliant majority. Transparent enforcement of the statutory time limits is therefore beneficial to the majority of compliant small firms. Employers who have a reasonable excuse for filing late will be able to appeal any penalty charged.

How to contribute

3.16 As outlined at paragraph 3.3 above we welcome comments on our interim assessment of the impacts of these withdrawals. Contributions by 30 November 2012 would be helpful to ensure they can be given sufficient consideration, but contributions after that time may also be taken into account prior to publication of the tax information and impact note.

3.17 Page 2 of this document above sets out how to contribute.