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## **Withdrawal of Extra-statutory Concessions**

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**Technical Note  
April 2009**

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## Summary

The House of Lords' decision in the *Wilkinson*<sup>1</sup> case made clear that the scope of HM Revenue & Customs' (HMRC) administrative discretion to make concessions that depart from the strict statutory position is not as wide as previously supposed. HMRC is therefore reviewing its concessions. Although it is likely that the majority can remain as they are, some are thought 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 Of these, some can be legislated to preserve their effect; others will need to be withdrawn. This document provides details of 10 Extra-statutory Concessions that need to be withdrawn as part of the review.

For further details about the review, please contact Toby Pearce:  
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<sup>1</sup> 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concessions (ESCs) have been a feature of the UK's tax system for decades and will continue to be made and withdrawn as necessary.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 IR1 and the former HM Customs and Excise booklet Notice 48.

1.2 The House of Lords' decision in the *Wilkinson* case made clear that the scope of HMRC's administrative discretion to make concessions that depart from the strict statutory position is not as wide as previously supposed.

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 putting it on to a legislative basis where it is appropriate to do so. Legislation to replace 19 such concessions came into effect in April 2009<sup>2</sup>. Consultation on further tranches of legislation is planned for later this year.

1.4 Each concession will be considered carefully and, while the aim is to retain as many concessions as possible, some may no longer be required and it may not be possible to legislate for the effect of some others: therefore these ESCs will need to be withdrawn.

1.5 As part of the review, HMRC has identified 10 concessions that appear to be beyond the scope of its discretion and need to be withdrawn. In some cases these concessions are little used. Some of them appear to be obsolete, catering for business practices that are no longer current. A list of those concessions to be withdrawn can be found below, with more details in chapter 2.

1.6 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. We believe the impact of the withdrawal of these ESCs will be minimal, but during the notice period HMRC will be happy to discuss the impact of the change further with the affected sectors.

1.7 For general queries, please contact Toby Pearce:  
by post - HMRC Central Policy, 100 Parliament Street, London SW1A 2BQ  
by e-mail - [tap@hmrc.gsi.gov.uk](mailto:tap@hmrc.gsi.gov.uk)  
by fax – 020 7147 2375.

For queries related to specific concessions, please use the contact named for each concession, below.

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<sup>2</sup> The Enactment of Extra-Statutory Concessions Order 2009, the Value Added Tax (Place of Supply of Goods) Order 2009 and the Value Added Tax (Input Tax) (Amendment) Order 2009 commenced 6 April 2009. The Insurance Premium Tax (Amendment of Schedule 6A to the Finance Act 1994) Order 2009 commenced 1 April 2009.

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## Chapter 2 – Extra-statutory Concessions to be withdrawn

### **3.08 VAT: use of margin scheme for vehicle sales when incomplete records have been kept**

The current concessionary arrangement which allows dealers in second-hand vehicles to account for VAT on either the purchase price, or half the selling price, of a vehicle for which they do not hold all the necessary margin scheme records will be withdrawn with effect from 1 April 2010.

#### **Background**

This concession affects dealers in second-hand motor vehicles who fail to meet the record-keeping requirements of the VAT margin scheme for second-hand goods, works of art, antiques and collectors' items. It was introduced in January 1995 when the margin scheme was implemented across the EU under the EC Seventh Directive. The treatment the concession allows had previously formed part of the provisions of the UK's margin scheme for cars.

Under Article 315 of the Principal VAT Directive, the taxable amount in a margin scheme supply is the profit margin, and that profit margin is the difference between the selling price and the purchase price. The effect of this concession is to allow VAT to be calculated on either the purchase records alone or on the sales records alone.

The concession does not ensure that VAT is charged on the actual profit margin obtained by the dealer. Further, it provides an advantage to the motor trade sector which is not available for any other types of second-hand goods. The concession has no basis in UK or EU VAT law and must therefore be withdrawn.

Accordingly, where dealers in second-hand motor vehicles fail to retain evidence of both the purchase *and* selling price of a particular vehicle in future, VAT will be due on the full selling price of that vehicle. This is the legal requirement when margin scheme records have not been kept.

#### **Further advice**

HMRC will write to the representative trade bodies by the end of April 2009 to ensure that they are aware of the formal date for withdrawal. It will also include information about the withdrawal in VAT Notes 9 months after this announcement.

If you have any questions about this change, please contact Sarah Bush on 0151 703 8950 (email: [sarah.bush@hmrc.gsi.gov.uk](mailto:sarah.bush@hmrc.gsi.gov.uk)) or Stephen Davies on 0151 703 8653 (email: [stephen.c.davies@hmrc.gsi.gov.uk](mailto:stephen.c.davies@hmrc.gsi.gov.uk)).

#### **4.1: Insurance Premium Tax: special accounting scheme**

The current concessionary arrangements in respect of the special accounting scheme will be withdrawn with effect from 1 April 2010.

##### **Background**

This concession has applied since Insurance Premium Tax (IPT) was introduced and allows insurers using the special accounting scheme to choose between two options to account for IPT on premiums received after the tax came into effect which relate to insurance contracts that began before that date.

When reviewed in 2006, very few insurers were still using the concession and only one specialist insurer indicated that they would need it in place until 2009. HMRC is therefore withdrawing this concession

##### **Further advice**

If you have any questions about the withdrawal of this concession, please contact Barbara Farndell on 020 7147 0245 (email: [barbara.farndell@hmrc.gsi.gov.uk](mailto:barbara.farndell@hmrc.gsi.gov.uk)).

#### **4.4: Insurance Premium Tax: home contents insurance**

The current concessionary arrangements in respect of premiums paid under home contents insurance will be withdrawn with effect from 1 April 2010.

##### **Background**

This concession was introduced to ensure that premiums paid under home contents insurance policies, that it was thought would otherwise be subject to the higher rate of insurance premium tax (IPT) when the policies are arranged by suppliers of domestic appliances, were subject to the standard rate of IPT.

The higher rate of IPT (17.5 per cent) applies (amongst other things) to insurance sold with certain domestic appliances when arranged by a supplier of domestic appliances or someone connected to them. The higher rate of IPT was introduced in this area to discourage VAT avoidance through the use of a 'value shifting' scheme i.e. transferring some of the value of the goods sold into the value of the warranty insurance. This concession was introduced to allay concerns that the higher rate would also apply to home contents policies arranged or sold by those suppliers.

The higher rate legislation does not cover home contents insurance and, in practice, HMRC's understanding is that such policies are hardly, if ever, sold or arranged in a way that would bring them into the higher rate.

HMRC is therefore withdrawing this concession. Our guidance will be expanded to confirm that this type of insurance is not caught by the higher rate legislation.

##### **Further advice**

If you have any questions about the withdrawal of this concession, please contact Barbara Farndell on 020 7147 0245 (email: [barbara.farndell@hmrc.gsi.gov.uk](mailto:barbara.farndell@hmrc.gsi.gov.uk)).

## **6.01 Excise: hydrocarbon duty: duty paid deliveries for bonded users/distributors**

The current concessionary arrangements in respect of hydrocarbon oil duty: duty paid deliveries for bonded users/distributors will be withdrawn with effect from 1 April 2010.

### **Background**

When duty-paid oil has been delivered to a person approved to receive duty-free oil of the same description under the provisions of the Hydrocarbon Oil Duties Act 1979, this concession allows repayment of the duty to the supplier, subject to the conditions which would apply if the oil had been delivered without payment of duty.

Under section 9(4) Hydrocarbon Oil Duties Act 1979 and the Hydrocarbon Oil (Industrial Reliefs) Regulations 2002 relief is available if supplies are made free of duty or if the user claims a refund.

HMRC believe the effect of this withdrawal will be minimal and understand that this concession has not been sought for several years. It is therefore withdrawing this concession.

### **Further advice**

If you have any questions about the withdrawal of this concession, please contact Annie Purkis on 0161 827 0303 (email: [annie.purkis@hmrc.gsi.gov.uk](mailto:annie.purkis@hmrc.gsi.gov.uk)).

## **A60: Income tax: agricultural workers board and lodgings**

The current concessionary arrangements in respect of agricultural workers board and lodgings will be withdrawn with effect from 1 April 2010.

### **Background**

This concession states that income tax will not be charged on the value of free board and lodging provided for agricultural workers by their employers despite any entitlement to take a higher cash wage in lieu provided by the Agricultural Wages Acts (AWA), where certain conditions are satisfied.

Since the introduction of the National Minimum Wage legislation this provision is no longer contained within the AWA and agricultural workers are no longer able to give up entitlement to take a higher wage in exchange for free board and lodging.

This concession is being withdrawn as it provides a concessionary tax treatment for a theoretical situation that does not occur in practice.

### **Further advice**

If you have any questions about the withdrawal of this concession, please contact Paul Harris on 020 7147 2528 (email: [paul.harris@hmrc.gsi.gov.uk](mailto:paul.harris@hmrc.gsi.gov.uk)).

## **C8: Corporation tax: close companies: loan creditors**

The current concessionary arrangements in respect of stock jobbing companies to remain outside the statutory definition of a 'close company' will be withdrawn with effect from 1 April 2010.

### **Background**

This concession protects 'money brokers' by providing for stock jobbing companies to remain outside the statutory definition of a 'close company' thereby avoiding extra corporation tax charges.

HMRC believe that this concession is now obsolete and it is therefore being withdrawn. This is because at the time when the concession was introduced, the principal consequence of close company status was the liability of participators in a close company to the corporation tax apportionment legislation. That legislation was repealed in the 1980's and the remaining consequence would be small companies relief which can be affected by the related issue of the number of associated companies rather than whether the company was or was not close.

In addition, since the Stock Exchange 'Big Bang' in 1986, the activities of the Stock Exchange have been carried out by 'market makers' rather than by stock jobbers making this concession obsolete.

### **Further advice**

If you have any questions about the withdrawal of this concession, please contact Michael Christy on 020 7147 2622 (email: [michael.christy2@hmrc.gsi.gov.uk](mailto:michael.christy2@hmrc.gsi.gov.uk)).

### **C13: Corporation tax: agricultural co-operative associations 'second and third-tier' associations**

The current concessionary arrangements in respect of agricultural co-operatives associations 'second and third-tier' associations will be withdrawn with effect from 1 April 2010.

#### **Background**

Corporation tax (CT) legislation provides beneficial tax treatment to certain agricultural 'co-operative associations'. CT legislation does not differentiate between the different tiers of co-operative associations. However at the request of the then Ministry of Agriculture Fisheries and Food (MAFF), HMRC introduced this concession which specifically applies the CT legislation to "second & third tier" associations of agricultural co-operatives.

The Department for Environment, Food and Rural Affairs (DEFRA) have confirmed with HMRC that they do not differentiate between the different tiers when awarding co-operative status. Therefore a second or third tier association would simply be approved by DEFRA as a co-operative association. It will then automatically be within the CT legislation and will benefit from the preferential tax treatment. Therefore this concession is obsolete and can be withdrawn.

#### **Further advice**

If you have any questions about the withdrawal of this concession, please contact Michael Christy on 020 7147 2622 (email: [michael.christy2@hmrc.gsi.gov.uk](mailto:michael.christy2@hmrc.gsi.gov.uk)).

#### **D47: Capital gains tax / income tax: temporary loss of charitable status**

The current concessionary arrangements in respect of temporary loss of charitable status will be withdrawn with effect from 1 April 2010.

#### **Background**

This concession concerns land given for charitable purposes. If the land subsequently reverts to the original donor, capital gains tax and income tax charges may fall on the trustees as a result unless the person to whom the land reverts is also holding the land in charitable trust. The concession prevents these charges provided that the land is re-established into charitable trust within 6 years.

Our information suggests that this concession has only been used twice in the last 10 years. This is partly because there is now a greater awareness about how these charges operate. It is therefore considered obsolete and therefore can be withdrawn.

#### **Further advice**

If you have any questions about the withdrawal of this concession, please contact Bill Muir on 01384 576146 (email: [bill.muir@hmrc.gsi.gov.uk](mailto:bill.muir@hmrc.gsi.gov.uk)).

## **Income tax / corporation tax: grants and subsidies: Highlands and Islands Enterprise**

The current concessionary arrangements in respect of grants and subsidies available to Highlands and Islands Enterprise (HIE) will be withdrawn with effect from 1 April 2010.

### **Background**

HIE provides a range of grants to businesses and public and voluntary sector organisations to encourage economic growth in Scotland. These included special grants which were not earmarked to any particular expenditure and which were taxable revenue receipts. This concession allows such grants to be treated as capital receipts in the hands of the bodies who receive them.

HMRC understand that HIE no longer provide unspecified grants and therefore the concessionary tax treatment is obsolete and should be withdrawn.

### **Further advice**

If you have any questions about the withdrawal of this concession, please contact Jenni Rich on 020 7147 0686 (email: [jenni.rich@hmrc.gsi.gov.uk](mailto:jenni.rich@hmrc.gsi.gov.uk)).

## **Income tax / corporation tax: equitable liability**

The current concessionary arrangements in respect of equitable liability will be withdrawn with effect from 1 April 2010.

### **Background**

Equitable liability is a concession which concerns the acceptance of time barred returns, accounts etc for direct taxes debts in instances where there was never a legal right to adjust the liability. The amount of the legal liability is not actually amended, but the difference between the original liability and the excess amount is not pursued by HMRC.

Before Self Assessment (SA), if a taxpayer received an assessment and did not think it was right, he could appeal against it and had 30 days from the date on which the notice of assessment was issued to do so. If there was no appeal or the appeal was unsuccessful the assessment became final and HMRC was able to take recovery proceedings for the full amount.

Where recovery proceedings concluded with the insolvency of the taxpayer, assessments that had not been appealed could sometimes result in unfairness. This is because in the past HMRC had 'Crown preference' for its debts meaning they ranked ahead of other creditors in an insolvency. 'Equitable liability' was introduced to avoid inflated claims unfairly reducing the money available to other creditors. Use of the concession was also extended to cases outside of insolvency where it was considered appropriate to do so.

Since the practice of equitable liability was last republished in 1995, there have been important changes:

- Crown preference in insolvency has been abolished; and
- Assessment to tax on profits has been almost entirely replaced by SA under which generous time limits are provided for submitting a return

Abolition of Crown preference in insolvency removed one of the elements of unfairness. SA removed the other, because it is now the taxpayer, not HMRC, who is responsible for calculating the charge to tax on profits.

### **Further advice**

HMRC will write to the representative bodies shortly to ensure that they are aware of the date for withdrawal. If you have any questions about the withdrawal of this concession, please contact Bob Horwill on 020 7147 2447 (email: [robert.horwill@hmrc.gsi.gov.uk](mailto:robert.horwill@hmrc.gsi.gov.uk)).