



Withdrawal of extra statutory concessions

Technical note
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Introduction

The House of Lords' decision in the *Wilkinson*¹ case clarified the scope of HM Revenue & Customs' (HMRC) 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 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 Of these, some can be legislated to preserve their effect; others will need to be withdrawn. This document provides details of 8 extra-statutory concessions that need to be withdrawn as part of the review.

For further details about the review, please contact Richard Hopwood:

by post – HMRC Central Policy, 100 Parliament Street, London SW1A 2BQ

by email – tap@hmrc.gsi.gov.uk

by fax – 020 7147 2375

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concessions (ESCs) have been a feature of the UK's tax system for decades and will continue to be made and withdrawn as necessary.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 IR1 and the former HM Customs and Excise booklet Notice 48.

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 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 2009². A second consultation which ended on 7 October³, resulted in further legislation being enacted⁴. A third consultation ended on 3 March 2010⁵ and draft legislation resulting from it will be published shortly. A fourth consultation is being published today.

1.4 Where it is not possible or appropriate to legislate a concession which exceeds the scope of HMRC's discretion it will need to be withdrawn. HMRC has identified eight more concessions that need to be withdrawn. These concessions mostly relate to VAT and cover a range of different areas, although a number relate specifically to caravans. 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. During the notice period HMRC is available to discuss the impact of the change with affected persons or their representative bodies.

1.6 HMRC recognises its obligations under equality legislation to consider the equality impacts of its policies on groups of individuals. We welcome the opportunity during the notice period to discuss the withdrawals with particular affected groups, while recognising that generally it is not possible to avoid withdrawal, given the extent of HMRC's discretion.

² 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.

³ Extra-statutory Concessions – Second Technical Consultation on Draft Legislation, HMRC consultation document 15 July 2009

⁴ SI2010/157 The Enactment of Extra Statutory Concessions Order 2010

⁵ Extra-statutory Concessions – Third Technical Consultation on Draft Legislation, HMRC consultation document 9 December 2009

1.7 For general queries on HMRC's review of ESCs, please contact Richard Hopwood:

by post: HM Revenue and Customs, Central Policy, 100 Parliament Street, London SW1A 2BQ

by e-mail: tap@hmrc.gsi.gov.uk

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

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Chapter 2 – extra statutory concessions to be withdrawn

3.4 VAT: Misunderstanding by a VAT trader

The current concessionary arrangement which provides that VAT and Insurance Premium Tax (IPT) undercharged due to a genuine misunderstanding by the taxpayer will be remitted provided certain conditions are met, will be withdrawn with effect from 1 January 2012.

Background

This concession allows HMRC not to collect VAT and IPT from taxpayers who have paid too little due to a genuine misunderstanding of the law, if certain conditions are met. It is being withdrawn because it not reasonable to allow remission of tax when the error is caused by the taxpayer. It is not aligned with treatment of errors in any other circumstance and so is inequitable, and could not be extended without detrimental impact on the collection of tax.

Although 3.4 itself does not refer to IPT, many aspects of the collection of IPT are similar to VAT. When IPT was introduced ESC 3.4 was extended to cover IPT through a reference in the IPT internal guidance (IPT09500), which was published on the HMCE and HMRC websites.

Further advice

If you have any questions about this change, please contact Peter Woodham on 020 7147 2573 (email: peter.woodham@hmrc.gsi.gov.uk).

3.16 VAT: Connection to the gas or electricity mains supply

The current concessionary arrangement which allows first time connection to utilities to be treated as zero rated for VAT will be withdrawn with effect from 1 January 2012.

Background

The concession allows zero rating for the first time connection to the gas or electricity mains supply of dwellings, communal residential and non-business charitable buildings, residential caravans and houseboats. Under the terms of Notice 701/20 Caravans and houseboats, HMRC additionally allows concessionary zero rating for first time connection of non-residential caravans to the gas or mains supply and for first time connection of caravans and houseboats to water and sewerage, where the relevant charge is made by the caravan site owner or moorings provider.

There are no legal vires in EU law which would permit this ESC to be introduced in UK legislation. We therefore intend to withdraw the concession. After the concession is withdrawn, first time connection to electricity or gas will be subject to the reduced rate of VAT if the utility is for domestic or non-business charity use and the connection charge is made by a person who supplies the fuel. For further information about domestic or non-business charity use, see Notice 701/19 Fuel and power.

Charges made by caravan site owners and houseboat mooring providers for first time connection to electricity, gas, water and sewerage will be subject to the same VAT liability as the caravan pitch or mooring (standard rated or exempt, depending on the circumstances) unless the site owner or mooring provider can identify the actual consumption of users (i.e. through metering), in which case, the connection charge will be subject to the same VAT liability as the supply of the utility (reduced rated for electricity and gas, zero rated for water and sewerage).

Further advice

If you have any questions about this change, please contact Michael Mclachlan on 020 7147 0432 (email: michael.mclachlan@hmrc.gsi.gov.uk).

8.1 VAT: Sail away boats

The current concessionary treatment which allows a VAT-registered business to zero-rate the supply of a sail away boat to a UK resident who intends to keep it outside the European Community (EC) will be withdrawn with effect from 1 January 2012.

Background

The VAT Sailaway Boat Scheme allows overseas residents to obtain VAT refunds on vessels purchased for personal export to a destination outside the EC. In 1972, in response to representations made by the Ship and Boat Builders' National Federation, HM Customs & Excise agreed to extend this zero-rating to boats supplied to residents of the UK. This was considered necessary in order to prevent the loss of trade in the UK following the introduction of VAT. This informal arrangement was formally approved as an Extra-Statutory Class Concession in October 1984.

Article 146 of Directive 2006/112/EC permits zero-rating of goods which are "...dispatched or transported to a destination outside the [European] Community by or on behalf of a purchaser not established within their respective territory...". The Article is given effect in Regulation 129 of the VAT Regulations 1995, the terms of which clearly exclude supplies to UK residents from the scope of zero-rating.

There are no legal vires in EU law which would permit this ESC to be introduced in UK legislation. We therefore intend to withdraw the concession.

However, businesses can zero-rate the supply of a boat to a UK resident provided they either undertake to export the boat themselves or they make all the arrangements for the export.

Further advice

If you have any questions about this change, please contact Sarah Bush on 0151 703 8950 (email: sarah.bush@hmrc.gsi.gov.uk) or John Bryning on 0151 703 8037 (email: john.bryning@hmrc.gsi.gov.uk).

VAT: Recharge of non-domestic (business) rates at caravan sites

The current concessionary arrangement which allows caravan site owners to treat the recharge of business rates as outside the scope of VAT will be withdrawn with effect from 1 January 2012.

Background

A caravan site owner will generally be liable to pay non-domestic (business) rates to the Local Authority if the caravans on the site are used for holiday or leisure purposes.

It is common practice for those site owners who pay business rates to recharge the cost of those rates on to individual caravan occupiers as part of the fee for occupying the caravan pitch. Such recharges should follow the same VAT liability as the rest of the pitch fee (usually standard rated). However, by concession, HMRC allows the portion of the pitch fee that reflects the business rates cost to be treated as outside the scope of VAT. This concessionary treatment is published in paragraph 4.4, Notice 701/20 Caravans and houseboats. There are no legal vires in EU law which would permit this concession to be introduced in UK legislation. We therefore intend to withdraw the concession.

Once the concession is withdrawn, the recharge of business rates by caravan site owners will follow the same VAT liability as the rental of the caravan pitch (usually standard rated). Withdrawal will not affect caravan occupiers who pay council tax.

Further advice

If you have any questions about this change, please contact Michael Mclachlan on 020 7147 0432 (email: michael.mclachlan@hmrc.gsi.gov.uk).

VAT: Recharge of water and sewerage rates at caravan sites

The current concessionary arrangement which allows caravan site owners to zero rate water and sewerage charges where actual consumption cannot be identified will be withdrawn with effect from 1 January 2012.

Background

When a caravan site owner can identify the actual consumption of water and sewerage for individual caravan pitches (i.e. through metering) and charges according to consumption, there is a separate zero rated supply of water and sewerage. In other circumstances, i.e. where individual consumption cannot be identified, any charges for water and sewerage form part of the fee for occupation of the pitch and should follow the same VAT liability as the pitch (exempt, in the case of permanent residential sites, standard rated if the pitch is seasonal). By concession, HMRC allows such charges to be treated as zero rated if the site owner's costs are apportioned on a fair and reasonable basis. The concessionary treatment is published in Paragraph 4.3, Notice 701/20 Caravans and houseboats. There are no legal vires in EU law which would permit this concession to be introduced in UK legislation. We therefore intend to withdraw the concession.

Once the concession is withdrawn, charges made by caravan site owners for water and sewerage will remain zero rated if actual consumption can be identified (i.e. through metering). In other circumstances, charges will follow the VAT liability of the caravan pitch (exempt, if a permanent residential site, standard rated if a seasonal site).

Further advice

If you have any questions about this change, please contact Michael Mclachlan on 020 7147 0432 (email: michael.mclachlan@hmrc.gsi.gov.uk).

VAT: Zero-rating of motor vehicles adapted after initial supply

The current concessionary arrangement (set out at paragraph 29.6 of chapter 12 of HMRC guidance V1-7) which allows a motor vehicle supplied to a disabled wheelchair user to be treated as a zero-rated supply if the vehicle was adapted shortly after it was supplied to the disabled person will be withdrawn with effect from 1 January 2012.

Background

This concession affects disabled wheelchair users who buy motor vehicles and then adapt them for their personal use. If the adaptation is done very shortly after the disabled person bought the vehicle, HMRC officers may use their discretion and allow VAT zero-rating on the purchase of the vehicle and the adaptation work. This usually happens where the adaptation work is done by a third party.

The current UK VAT legislation, under Items 2(f), 2A and Note 5L to Group 12, Schedule 8, VAT Act 1994, allows a motor vehicle to be zero-rated provided it has been adapted before it is supplied to the disabled person or the charity. Otherwise only the adaptation work itself is eligible for zero-rating. The effect of the concession is to allow a motor vehicle to be zero-rated where the adaptation is carried out after its purchase and therefore goes beyond the scope of the statutory relief.

There are no legal vires in EU law which would permit this concession to be introduced in UK legislation. We therefore intend to withdraw the concession.

VAT zero-rating is however available on motor vehicles that are adapted before the vehicle is being supplied provided all the other qualifying conditions for zero-rating are met.

Further advice

If you have any questions about this change, please contact Roger Blake on 020 7147 2782 (email: roger.blake@hmrc.gsi.gov.uk) or Toyin Olaiya on 020 7147 0351 (email: oluwatoyin.olaiya@hmrc.gsi.gov.uk).

VAT: Zero-rating of parts and accessories for boats supplied for disabled people

The current concessionary arrangement which allows VAT zero-rating on the supply of parts and accessories designed solely for use in, or with, boats that are designed or permanently and substantially adapted for use by disabled persons will be withdrawn with effect from 1 January 2012.

Background

VAT zero-rating applies to parts and accessories designed solely for use or with goods eligible for zero-rating in Item 2 of Group 12, Schedule 8, VAT Act 1994, except for Item 2(i), which relates to boats designed or adapted for use by disabled persons or charities that make them available for disabled persons. A concession was therefore introduced to apply zero-rating to parts and accessories designed or adapted for use in or with boats.

There are no legal vires in EU law which would permit this concession to be introduced in UK legislation. We therefore intend to withdraw the concession.

VAT zero-rating is however available on the supply of:

- boats that are designed or substantially and permanently adapted for the domestic or personal use of disabled persons;
- parts and accessories that are used in connection with repairs or maintenance to qualifying boats; and
- parts and accessories that are included as part of the single supply of qualifying boats.

Further advice

If you have any questions about this change, please contact Roger Blake on 020 7147 2782 (email: roger.blake@hmrc.gsi.gov.uk) or Toyin Olaiya on 020 7147 0351 (email: oluwatoyin.olaiya@hmrc.gsi.gov.uk).

Corporation tax: cemeteries: lump sums for grave maintenance etc.

This practice (set out in the HMRC Business Income Manual at BIM52510), which modifies the tax treatment of lump sums received by cemetery businesses for long-term maintenance of graves and monuments, will be withdrawn with effect from corporation tax accounting periods commencing on or after 1 January 2012.

Background

This practice affects companies which run a cemetery business and are chargeable to corporation tax on trade profits within Part 3 of the Corporation Tax Act 2009 (“CTA 2009”).

A cemetery business sometimes gets a lump sum for the maintenance in perpetuity of a grave or monument or for decoration of the grave. These sums are receipts of the trade carried on by the cemetery business. The extent to which such receipts (and expenditure incurred on grave maintenance etc) are recognised in the accounts of the business normally follows generally accepted accounting practice. Generally accepted accounting practice matches receipts and expenses to determine how much profit has been earned in a period. The lump sum is brought into account gradually over the years in which the grave is maintained. The profit found by applying generally accepted accounting practice is accepted for tax purposes unless it does not represent “the full amount of the profits” as required by section 8 of CTA 2009. For example, an over-conservative reserve may have been made for the future costs of grave maintenance. If the cemetery business invests the lump sum, any income arising from the investment is taxable as investment income and not as trade profits.

The practice allows a cemetery business to dispense with the calculations needed to find the amount of profit earned each year in respect of such lump sums. Instead, the lump sum is left out of account but the income earned from investing it is brought in as a trade receipt (and not taxed as investment income). The actual costs of grave maintenance etc are allowed as a deduction in the period.

The practice gives preferential treatment to cemetery businesses over other businesses which receive advance payments for later work. It displaces the normal UK tax rules for advance payments. It is not capable of being replaced by legislation and must therefore be withdrawn. Lump sums of this nature will be brought into account in accordance with generally accepted accounting practice and tax rules on charging the full amount of profits. Any income earned from investing the lump sum will be taxed as investment income.

The withdrawal of the practice will take effect for lump sums received during corporation tax accounting periods of cemetery businesses commencing on or after 1 January 2012. Income received from the investment of lump sums will be treated as investment income for corporation tax accounting periods commencing on or after 1 January 2012

Further advice

If you have any questions about this change, please contact Hugh Dorey on 020 7147 3850 (email: hugh.dorey@hmrc.gsi.gov.uk) or Trevor Lawson on 020 7438 7708 (email: trevor.j.lawson@hmrc.gsi.gov.uk).