

LOW INCOMES TAX REFORM GROUP

Extra-Statutory Concessions – Technical Consultation on draft Legislation RESPONSE TO HM REVENUE & CUSTOMS CONSULTATIVE DOCUMENT

1. Introduction

1.1. *About us*

- 1.1.1. The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998 LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes.
- 1.1.2. The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

1.2. *Extra-Statutory Concessions*

- 1.2.1. Extra-Statutory treatment, through HMRC exercising their care and management powers, is a necessary part of the tax system where unfair treatment, or indeed cost disproportionate to the Exchequer risk or the tax to be collected, would otherwise result from a strict application of the law.
- 1.2.2. We are keen to remain involved in the consultation process on legislating extra-statutory material following the Wilkinson case, and note that this is only the first round of such consultation. If HMRC are consulting on any concessions or other extra-statutory material which could affect individuals, in particular those from low-income or potentially excluded sectors of society, we would like to note our interest in being consulted.
- 1.2.3. With any concessionary treatment, issues of fairness can arise so HMRC must ensure consistent application of those concessions which remain. We are particularly interested in ESCs A19 and B41 in terms of the treatment of taxpayers in cases of official error. Concessionary treatment given through press releases – for instance the decision not to collect arrears of tax on certain small pensions¹ – must

¹ See <http://www.hmrc.gov.uk/pensionschemes/taxation-small-pensions-note.htm>

also be applied consistently so as not to result in different treatment of taxpayers in similar circumstances which otherwise would be conspicuously unfair.

1.3. ***Impact Assessment***

- 1.3.1. The consultation document states that an Impact Assessment is not required. Whilst we agree that the intention of this process is only to review existing concessions and decide whether or not they fall within the scope of HMRC's powers (and if not, to legislate accordingly), we question whether it is right to assume there will be no, or negligible, impact.
- 1.3.2. If HMRC are reviewing the validity of concessions and making judgments as to whether or not to keep them as they are, legislate or withdraw them, then there may be impacts arising from such judgments. It is doubtful whether the impact of the original ESCs was fully assessed when they were brought in; therefore the current review would seem to present an ideal opportunity to re-evaluate. Such a review would seem consistent with BERR guidance¹ on the purpose of impact assessments, which states [bold emphasis added]:

'Impact Assessment is both:

- a **continuous process** to help the policy-maker fully think through and understand the consequences of possible and actual Government interventions in the public, private and third sectors; and
- a tool to enable the Government to weigh and present the relevant evidence on the positive and negative effects of such interventions, including by **reviewing the impact of policies after they have been implemented.**'

1.4. ***The current consultation***

- 1.4.1. We have only responded below on those concessions which we feel could be relevant to individuals on low incomes, and where we have comments to put forward.
- 1.4.2. As a general comment, we feel that wherever concessions are to be legislated, the language used should be kept as straightforward as possible, in keeping with the spirit of the Tax Law Rewrite Project. Where possible, this should retain the brevity of the existing ESC text.

2. **Comments on Concessions to be legislated**

2.1. ***D03: Private residence exemption: periods of absence (a)***

- 2.1.1. We agree that the draft text appears to encompass the extension of relief envisaged in ESC D3. There appears to be a minor change in language in that the ESC refers to spouses 'living together' as opposed to 'living with' one another but we note that meaning of the two appears to be one and the same by virtue of Section 288(3) TCGA 1992 which interprets 'living with' by reference to the 'living together' definition in S1011 ITA 2007.

¹ See BERR Impact Assessment Guidance <http://www.berr.gov.uk/files/file44544.pdf>

2.2. D06: Private residence exemption: separated couples

- 2.2.1. There is a range of court order definitions given under the draft S225B(2)(b). Is it necessary to be so prescriptive? We are not certain whether the wording of Condition A would cover all circumstances where foreign courts are involved and would like reassurance that taxpayers involved in foreign separation and divorce proceedings will not be disadvantaged. Given that the current ESC wording refers simply to 'a financial settlement' the wording of the draft clause seems more restrictive in its interpretation.

2.3. D37: Private residence exemption: relocation arrangements

- 2.3.1. As this relief is analogous with the 'last 36 months of...ownership' rule under S223(2)(a), it would seem logical to similarly express the draft S225C(2)(a) as 36 months rather than three years in the current draft.

2.4. F19: Decorations awarded for valour or gallant conduct exempt from IHT

- 2.4.1. The explanation to the draft legislation talks about how the legislation 'covers civilian as well as military decorations' and that the 'decoration or award need not be a medal and might, for example, be an object ...'. This explanation seems entirely reasonable, expanding the draft legislative term of 'decoration or other award'. It does, however, seem to be another example of expanding the law by way of guidance and it might be better to include a more detailed description in the legislation itself.

2.5. Travel and subsistence for self-employed

- 2.5.1. Many phrases in the draft legislation are potentially susceptible to differing interpretations, for example 'reasonable expenses', an 'itinerant' trade, 'occasionally' and even 'place'.
- 2.5.2. Case law may help in some aspects of interpretation, such as *Horton v Young* (1971) on the definition of an 'itinerant' trade. But we would ideally prefer to see a definition of 'itinerant' given in the legislation itself for clarity.
- 2.5.3. What is 'reasonable' needs to be gauged in accordance with the taxpayer's individual circumstances, taking into account any special needs etc.
- 2.5.4. Given that these issues are likely to still need a good deal of guidance on what HMRC will accept, the usefulness of legislating this particular concession is perhaps questionable.
- 2.5.5. However, taxpayers currently do not receive sufficient information from HMRC when completing their tax return to claim the benefit of the existing concessionary treatment. Given that the provision is to be written into legislation, it is even more imperative that HMRC offer guidance to taxpayers on claiming relevant expenses.
- 2.5.6. For example, the 2007/08 guidance notes for completion of the SA tax return self employment pages, box 19 'Car, van and travel expenses' simply advise that '...hotel room costs and meals on overnight business trips' (helpsheet SEFN 6) can be included. This is not sufficient to alert the SA filer to the existence of the ESC and to make a claim for the full extent subsistence expenditure allowed therein.

2.6. **3.12: VAT: Buses with special facilities for carrying disabled persons.**

- 2.6.1. The wording used in the draft legislation differs from that of the concession. The latter refers to a vehicle 'equipped with facilities for persons in wheelchairs', the former to one 'adapted for wheelchair users'. We assume that 'equipped with facilities' would be given the same interpretation as 'adapted' in application of the new provision.

LITRG

9 January 2009