

LOW INCOMES TAX REFORM GROUP

HM Revenue & Customs Equitable Liability Response to 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. *General comments*

- 1.2.1. We welcome the commitment to legislate the concessionary relief known as 'equitable liability'. We have reviewed the draft legislation set out in the consultation as compared to the existing Extra-Statutory Concession and have a number of comments.

2. 'Once only' provision

- 2.1.1. The draft legislation is worded such that special relief can apply only once:

'3A(1) This paragraph applies where—

...

(c) the person has not made a claim in reliance on this paragraph on any previous occasion.'

- 2.1.2. However, the original concession provided that:

'...it would be most unusual for such treatment to be applied more than once in favour of the same taxpayer'.

- 2.1.3. This therefore represents a change in the terms of the relief – from the possibility of it applying more than once (albeit perhaps in rare circumstances) to a strict once-only

application.

- 2.1.4. Within the explanation, page 18 (para 4.22) of the consultation document says of this restriction:

‘But having needed to resort to this relief, it is expected thereafter that the taxpayer will know what his obligations are and will comply with them.’

- 2.1.5. We would argue, however, that HMRC should retain the ability to apply special relief in certain circumstances, thus retaining the ‘most unusual’ concept in the enacted version (or some similar phraseology).

2.2. ***Mental health***

- 2.2.1. This would retain flexibility in cases where, say, a person with fluctuating mental capacity becomes capable of regularising their affairs for a period but whose difficulties recur. The comment from para 4.22 reproduced above would not apply to them as they might not be able to either understand their obligations, or be capable of dealing with them.

- 2.2.2. Indeed, para 4.9 of the consultation document acknowledges that relief has previously been granted to people *‘suffering from illness, including mental illness, and find it particularly difficult to engage with the tax system.’*

2.3. ***Other ‘most unusual’ circumstances***

- 2.3.1. Flexibility should also be retained to allow for more than one application in other circumstances where it would be ‘unconscionable’ of HMRC not to allow the special relief a second time. Equitable liability is, for example, also used when the taxpayer has not received correspondence from HMRC through no fault of their own (eg HMRC write to the taxpayer at an old address throughout, even though the taxpayer has kept them informed of changes of address).

- 2.3.2. Again, one would hope it is improbable that this would lead to a second situation where special relief would be necessary; but it is not impossible and therefore we would again suggest leaving sufficient flexibility within the law to allow for such occurrences.

2.4. ***Clarification points***

‘Claim’ as opposed to ‘successful claim’

- 2.4.1. Even as it stands, para 3A(1)(c) refers to a previous claim having been made, irrespective of whether it was successful. Surely a claim for special relief should not be ruled out because there has been a previous (unsuccessful) claim?

‘Amount’ (or part thereof)

- 2.4.2. Subsection 3A(1)(a) refers to the determination of ‘an amount’ and subsection 3A(2) goes on to refer to a claim for the repayment or discharge of ‘the amount’. This seems to cater just for a claim to waive the whole of a determined amount, whereas in fact the claimant may accept that he or she has some liability but that the determination is excessive, ie he or she will only want part of the total amount waived. We feel the legislation needs to be clearer on this point.

3. Bringing one's affairs up-to-date as respects matters concerning the Commissioners

3.1.1. The draft legislation says:

'3A(5) Condition B is that the person's affairs (as respects matters concerning the Commissioners) are otherwise up to date or arrangements have been put in place, to the satisfaction of the Commissioners, to bring them up to date so far as possible.'

3.1.2. Para 3.24 goes on to say:

'...proving that he has filed all returns and paid all other sums due to HMRC for any tax, credit or benefit that it administers. Both of these conditions are part of the current concession.'

3.2. Tax credits and other matters of HMRC responsibility

3.2.1. First, we are concerned that *'matters concerning the Commissioners'* has a much wider scope now than when the concession was first introduced: it now includes (inter alia) tax credits as confirmed by the extract from para 3.24 above.

3.2.2. There is therefore an additional fetter on HMRC's ability to operate special relief that was not present when the Inland Revenue Commissioners were responsible only for tax.

3.3. Up to date so far as possible

3.3.1. As noted above, the draft legislation refers to the taxpayer's affairs being *'up to date or arrangements have been put in place... to bring them up to date as far as possible'*; but para 3.24 suggests a requirement that all sums due to the Commissioners in any capacity should actually be **paid**.

3.3.2. The making of arrangements to bring matters up to date and all tax having been paid and returns filed are two different things. We are therefore concerned that para 3.24 might reflect the guidance that HMRC intend to issue to staff, thus implying a more stringent interpretation than is actually provided for in the legislation. We would expect, for example, the relief to operate where a time to pay arrangement has been agreed even if some of the tax payable is still owing under the terms of the agreement.

3.3.3. Also, what happens if there is a dispute as to how much is owed to the Commissioners on a tax or tax credits matter, or whether anything is owed to them at all? Some disputes can be protracted, sometimes taking years to settle. And if HMRC turn down a dispute, the taxpayer might take be able to take their case to the Adjudicator or Ombudsman. Would the Commissioners be satisfied in such circumstances that matters were up-to-date, if **arrangements** were in place to seek a resolution via a recognised path such as the Adjudicator?

3.3.4. It appears it could also mean that a person is, for example, precluded from claiming special relief in relation to their Income Tax Self-Assessment affairs while they are in dispute with HMRC over a VAT matter. What if someone has appealed against an assessment to VAT and even have paid the sum in dispute into court, though not to the Commissioners? We would interpret in this situation that matters had been brought up-to-date so far as possible.

4. Other comments

4.1. Repayments

- 4.1.1. We welcome the change in the special relief rules compared to the equitable liability concession in that granting of the statutory relief will bring with it the possibility of a repayment – whereas formerly, the debt was waived but no refunds were made.

4.2. Further comments on the draft legislation

The name of the relief

- 4.2.1. The name ‘special relief’ says nothing about what this relief actually is and indeed the taxes acts contain various other special reliefs which could add to confusion, so we would prefer that the name of the equitable liability legislation would benefit from being more distinctive. ‘Exceptional relief’ might, for example, be slightly better.

5. Operation of the relief

5.1. Appeals

- 5.1.1. In terms of processing of claims for special relief, we understand that HMRC’s procedure will be to check a claim when it is received to see if it meets the conditions. If not, HMRC will reject it, giving reasons for so doing, and the taxpayer should then be able to re-submit the claim if (for example) the problem is that they have not supplied enough information (per para 4.13 of the consultation document). However, if HMRC still rejects the claim on the grounds the conditions are not met, we understand there is no right of appeal and the only remedy for the taxpayer is judicial review – clearly beyond the means of most individuals.
- 5.1.2. We note, however, that the position is different if HMRC start an enquiry into the detailed information provided in the claim, as the appeal rules in Schedule 1A, para 9 then come into play.
- 5.1.3. We would therefore prefer to see an appeal right on the rejection of a claim for special relief in the event that HMRC do not enquire; but if there is to be no such right of appeal, this point needs to be made very clear in the guidance to both staff and taxpayers. Furthermore, we would like a clear understanding of when the enquiry route would or would not be pursued given the different rights in each situation.

5.2. Guidance

- 5.2.1. HMRC will presumably be producing both internal guidance for staff and external guidance for claimants. LITRG is very keen to have the opportunity to comment on this in draft and in good time for us to give it proper consideration. It should of course be finalised and in place and HMRC’s other guidance material reviewed and updated before the switch from the concession to special relief. We therefore look forward to seeing a draft as soon as it is available for circulation.

LITRG
1 October 2010