



TAXREP 21/14 (ICAEW REPRESENTATION 55/14)

WITHDRAWAL OF EXTRA STATUTORY CONCESSIONS

ICAEW welcomes the opportunity to comment on the consultation paper [Withdrawal of extra statutory concessions](#) published by HM Revenue & Customs on 31 January 2014.

This response of 25 April 2014 has been prepared on behalf of ICAEW by the Tax Faculty. Internationally recognised as a source of expertise, the Faculty is a leading authority on taxation. It is responsible for making submissions to tax authorities on behalf of ICAEW and does this with support from over 130 volunteers, many of whom are well-known names in the tax world. Appendix 1 sets out the ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark proposals for changes to the tax system.

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ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value.

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INTRODUCTION

1. The consultation is to seek views on the proposed withdrawal of certain ESCs:

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. 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 Of these, some can be legislated to preserve their effect; others will need to be withdrawn. This document provides details of 13 extra-statutory concessions that need to be withdrawn as part of the review and gives notice of their withdrawal with effect from April 2015.

COMMENTS ON SPECIFIC ESC

F8: Accumulation and maintenance trusts

2. We would prefer an amendment to s71D IHTA1984 to ensure the effect of this ESC is continued, rather than simply rely on guidance.

F11: Property chargeable on ceasing of an annuity

3. We are of the view that the valuation point is implicit and so have no objection to the ESC being withdrawn.

F12: Disposition for maintenance of unmarried mother

4. We agree this is obsolete and no longer required.

F18: Treatment of income tax in Canada on capital gains deemed to arise on a person's death

5. Subject to the actual guidance written to replace this ESC we are content that it is withdrawn.

J1: Inter vivos gifts to charities

J2: Agricultural property

J3: Relief for successive charges

J4: Inter vivos gifts: deductions for development gains and development land tax

6. We agree that these ESC are obsolete and no longer required.

APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. **Statutory:** tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. **Certain:** in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. **Simple:** the tax rules should aim to be simple, understandable and clear in their objectives.
4. **Easy to collect and to calculate:** a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. **Properly targeted:** when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. **Constant:** Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. **Subject to proper consultation:** other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. **Regularly reviewed:** the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. **Fair and reasonable:** the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. **Competitive:** tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see icaew.com/en/technical/tax/tax-faculty/~media/Files/Technical/Tax/Tax%20news/TaxGuides/TAXGUIDE-4-99-Towards-a-Better-tax-system.ashx)