



TAXREP 17/10

Memorandum of comment submitted in March 2010 by the ICAEW, in response to HM Revenue & Customs consultation paper, Extra statutory concessions: third technical consultation on draft legislation, published in December 2009

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INTRODUCTION

1. The ICAEW welcomes the opportunity to comment on the consultation paper *Extra statutory concessions: third technical consultation on draft legislation* published by HM Revenue & Customs.

WHO WE ARE

2. The ICAEW operates under a Royal Charter, working in the public interest. Its regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the Financial Reporting Council. As a world leading professional accountancy body, we provide leadership and practical support to over 134,000 members in more than 160 countries, working with governments, regulators and industry in order to ensure the highest standards are maintained. We are a founding member of the Global Accounting Alliance with over 775,000 members worldwide.
3. Our members provide financial knowledge and guidance based on the highest technical and ethical standards. They are trained to challenge people and organisations to think and act differently, to provide clarity and rigour, and so help create and sustain prosperity. We ensure these skills are constantly developed, recognised and valued.
4. The Tax Faculty is the focus for tax within the Institute. It is responsible for technical tax submissions on behalf of the Institute as a whole and it also provides various tax services including the monthly newsletter 'TAXline' to more than 11,000 members of the Institute who pay an additional subscription, and a free weekly newswire

MAJOR POINTS

Support for the initiative

5. We welcome the proposal to enshrine in legislation the concessions listed in this technical consultation. This will give taxpayers the added security that the treatment is now certain and that they no longer need to rely on HMRC allowing a concession to be applied.
6. In particular we are pleased to note that it has been recognised that the existing legislation that was meant to enact ESC C4, Trading activities for charitable purposes, will be widened to give full effect to the concession. However, we consider that the proposed legislation does not fully reflect the concession and should like to see the proposed clause changed slightly.
7. With the exception of the concession relating to ESC C4, we have no comments to make on the proposals which appear to bring into legislation the various concessions as published.

BACKGROUND TO LEGISLATION OF CONCESSIONS

Scope of discretion and the seven concessions

8. HM Revenue & Customs (HMRC) has identified the need to legislate some extra statutory concessions (ESCs) which appear to exceed the scope of its discretion. It is consulting on the draft legislation to ensure it gives effect to the existing concessionary tax treatment.
9. On 9 December 2009 HMRC issued its third technical consultation document on draft legislation to implement seven further concessions. The seven concessions for which draft legislation has been published in this third technical consultation document are:

- A10 Lump sums paid under overseas pension schemes

- A31 Life assurance premium relief by deduction: pre-marriage policies: premium relief after divorce
- A51 Repayment supplement: life assurance premium relief
- A81 Termination payments and legal costs
- C4 Trading activities for charitable purposes
- Qualifying life assurance policies – reinstatement within 13 months
- 4.5: Insurance premium tax: Arrangements for discounted insurance

SPECIFIC POINTS

ESC C4 Trading activities for charitable purposes

10. The ESC states that ‘tax will not be charged on such profits providedthe profits are transferred to charities or otherwise applied for charitable purposes’ whereas the proposed legislation uses the words ‘.....the profits are either applied for charitable purposes or transferred to another charity’.
11. We are concerned that where an event is put on and the profits are transferred to more than one charity, the new legislation will not remove those profits from tax. For the avoidance of doubt and to reflect ESC C4 accurately, we believe that section 529(2) of Income Tax Act 2007 should read ‘....either applied for charitable purposes or transferred to one or more charities’.

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APPENDIX 1

The 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 http://www.icaew.co.uk/taxfac/index.cfm?AUB=TB2I_43160,MNXI_43160