



HM Revenue  
& Customs

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**Withdrawal of extra statutory concessions**

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Technical note and call for evidence  
4 November 2015

**Who should read this document?**

Anyone who may be affected by the withdrawals of certain non-statutory tax reliefs set out at chapter 2. This includes large and small businesses, employers, individuals and the bodies that represent all of the above.

**Making your views heard**

We are keen to gather evidence from those who have relevant data about the potential impact of withdrawal of the tax reliefs detailed in this note. Data on the number and types of users of the tax reliefs, including from any bodies who may have undertaken research in the area or represent significant numbers of those affected, is particularly welcome.

Data is requested by **27 January 2016** to ensure it receives full consideration. However it may be possible to take into account data received after that time.

**Phone enquiries**

Stephanie Allistone on 03000 586496

**Email**

[tap@hmrc.gsi.gov.uk](mailto:tap@hmrc.gsi.gov.uk)

**In writing**

Stephanie Allistone, HM Revenue & Customs, Room 1C/06, Central Policy, 100 Parliament Street, London SW1A 2BQ

**Your details**

Representative groups may wish to give a summary of the people and organisations they represent and, where relevant, how they consulted in reaching their conclusions. You may wish to include contact details for follow-up (e.g. name, phone number, email address).

**Confidentiality**

Information provided in response to this document, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Revenue and Customs (HMRC).

HMRC will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

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## Introduction

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The House of Lords' decision in the *Wilkinson*<sup>1</sup> case clarified the scope of HMRC's administrative discretion to make concessions that depart from the strict statutory position. In light of that decision HMRC is reviewing its concessions. The majority can remain as they are, but some are considered to be beyond the scope of HMRC's discretion. Of these, some can be legislated to preserve their effect, some are no longer necessary, and others will need to be withdrawn. This document provides details of 9 extra-statutory concessions which will be withdrawn as part of the review and gives notice of their withdrawal with effect from April 2017.

This document also sets out HMRC's interim assessment of the potential impact of the withdrawals. Further data to assist HMRC in its assessment is welcome to ensure we fully understand what impact the withdrawals may have. HMRC's impact assessment is set out in chapter 3.

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<sup>1</sup> [R v HM Commissioners of Inland Revenue ex p Wilkinson \[2005\] UKHL 30](#)

## Chapter 1 – background

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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 concessionary treatment that departs from the statutory tax treatment. It is not limited to concessions published in the former Inland Revenue booklet IR1<sup>2</sup> and the former HM Customs and Excise booklet Notice 48<sup>3</sup>.

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 began reviewing its concessions. Most ESCs can 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 giving it statutory effect where it is appropriate to do so. To date seven consultations have been published seeking comments on such legislation, and a consultation containing legislation for one concession is published today alongside this technical note.

1.4 Where it is not possible or appropriate to give statutory effect to a concession which exceeds the scope of HMRC’s discretion it will need to be withdrawn. HMRC has identified the nine concessions detailed in this note as needing to be withdrawn. These concessions relate to income and corporation tax, excise duty and VAT and withdrawal will take effect from 6 April 2017 for the income/corporation tax ESCs and 1 April 2017 for the excise and VAT ESCs, so allowing at least a full year’s notice. 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.

1.6 Chapter 3 sets out HMRC’s interim assessment of the potential impact of the withdrawals. Further data to assist HMRC in fully understanding the impact of the withdrawals would be welcome.

1.7 For general queries on HMRC’s review of ESCs, please contact Stephanie Allistone. Contact details are provided at page 2 above. For queries related to specific concessions, please use the contact named for each concession, below.

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<sup>2</sup> [Former Inland Revenue booklet IR 1](#)

<sup>3</sup> [Public Notice 48](#)

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## Chapter 2 – extra statutory concessions to be withdrawn

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### **Para 9.8 Notice 708 – Apportionment of works of approved alterations to a qualifying protected building**

#### **9.8.1 Apportionment for repair and maintenance**

Works of repair or maintenance are standard-rated. If you are supplying both zero-rated and standard-rated work you may apportion your supply on a fair and reasonable basis to reflect the differing liabilities.

If you decide not to make an apportionment then none of your work can be zero-rated.

#### **9.8.2 Apportionment for qualifying parts of buildings**

You cannot zero-rate work to a whole building where only part of it is a ‘protected’ building. However, you can zero-rate the work to the qualifying parts. For example, if you carry out alterations to a listed building used by a charity, it may be that only part of the building will be used solely for a ‘relevant charitable purpose’. If so, only the approved alterations to that part of the building can be zero-rated.

#### **9.8.3 Apportionment for mixed site developments**

Where a service (such as the carrying out of civil engineering work) is supplied in part in relation to an approved alteration and in part for other purposes, a fair and reasonable apportionment may be made to determine the extent to which the supply is treated as being zero-rated.

If you decide not to make an apportionment then none of your work can be zero-rated.

Zero rating applied to approved alterations to listed buildings designed as dwellings or intended for use solely for a relevant residential or relevant charitable purpose. This zero-rate was withdrawn at Budget 2012 but transitional rules applied. Where a building was intended only partly for such purposes (e.g. a flat above a shop) the concession allowed apportionment so that the part of the building used for the qualifying purpose could have benefitted from the zero rate.

The transitional rules applied only until 30 September 2015, so the concession became obsolete from that time.

#### **Further advice**

If you have any questions about this, please contact John Egerton on 03000 585703 (email: [john.egerton@hmrc.gsi.gov.uk](mailto:john.egerton@hmrc.gsi.gov.uk)).

## **A94 – Profits and losses of theatre backers (Angels)**

An individual who backs a theatrical production, except where such backing activity forms part of a trade or profession within the theatre industry, is a theatre 'angel'. If the show is successful, the money is first repaid, and then the angel receives a share of any profit. If the show fails, the angel may lose not only the hope of a return on the money but also all or part of the original investment. Any return a theatre angel receives over and above the original investment is strictly assessable under section 683 of Income Tax (Trading and Other Income) Act 2005, and the CGT rules apply to losses.

Despite the strict rules, UK resident angels may, in respect of any particular transaction, treat profits under section 687 of Income Tax (Trading and Other Income) Act 2005, and losses under section 872 of Income Tax (Trading and Other Income) Act 2005. Where this concessionary treatment is given, any loss in respect of that transaction cannot also qualify as a capital loss.

Unincorporated payers who make payments liable under section 683 of Income Tax (Trading and Other Income) Act 2005 have the right, but usually no obligation, to deduct tax.

Incorporated payers will always have an obligation to deduct tax. The Revenue will not however insist on deduction of tax from payments to theatre angels for their theatrical investments if the angel's usual place of abode is in the United Kingdom. Payers who do exercise their right to deduct tax under Section 349(1) of the Income and Corporation Taxes Act 1988 must account to the Inland Revenue for the tax.

The introduction of a statutory relief for investment in theatre production from 01 September 2014 (see section 36 and Schedule 4 Finance Act 2014) means this concession is now outdated and will be removed from April 2017.

### **Further advice**

If you have any questions about this please contact James Ewington on 03000 553788 (email: [james.ewington@hmrc.gsi.gov.uk](mailto:james.ewington@hmrc.gsi.gov.uk))

## **A69 – Building Societies: conversion to company status**

When a building society converts to company status under the Building Societies Act 1986, certificates of non-liability to tax and declarations by investors given or made prior to conversion which satisfy the conditions of the Income Tax (Building Societies) (Dividends and Interest) Regulations 1990, will be treated as having been given or made to the successor company.

Building Societies will no longer be required to deduct tax from the interest they pay on savings accounts after 6 April 2016, when the Personal Savings Allowance is introduced. This means that, from that date, the certificates of non-liability to tax and declarations referred to in this concession will no longer have any effect. This concession will therefore be obsolete before April 2017.

### **Further advice**

If you have any questions about this please contact Helen Williams on 03000 585204 (email: [helen.williams2@hmrc.gsi.gov.uk](mailto:helen.williams2@hmrc.gsi.gov.uk))

## **C1 – Credit for underlying tax: dividends from trade investments in overseas companies**

### **(a) Portfolio shareholders**

Credit is still available under a few double taxation agreements for underlying tax on portfolio investments. Where a United Kingdom resident receives dividends on a holding of ordinary shares (including the participating part of participating preference dividends) in a company resident in an overseas territory with which the United Kingdom has an agreement which provides for such relief, the credit legally due against the United Kingdom tax chargeable on the dividends takes into account, in addition to any direct tax on the dividends, the underlying tax payable in the other country on the company's profits. In practice, provided that the overseas countries concerned have agreements with the United Kingdom of the type mentioned above, the credit also takes into account any United Kingdom tax or foreign tax in a third country payable by the overseas company on its income; and, when the overseas company's profits include ordinary or participating preference dividends from a second company resident in that or another overseas country, both the direct tax charged on the dividends and the underlying tax payable on the profits of the second company. Relief is given similarly for the tax relating to dividends and profits of companies at further removes along a chain of shareholdings.

This concession had 2 legs but the second leg relating to insurance companies is already obsolete so that text is not reproduced here. We believe this part of the concession is also obsolete due to Treaty changes.

### **Further advice**

If you have any questions about this please contact David Price on 03000 585992 (email: [david.price@hmrc.gsi.gov.uk](mailto:david.price@hmrc.gsi.gov.uk))

## **6.2 Excise: hydrocarbon oil duties: duty-paid deliveries for refinery boilers**

When the Commissioners are satisfied that unused, duty paid, hydrocarbon oil has been delivered to any premises approved as a refiners for use as fuel for the production of energy they may repay to the supplier the duty which they are satisfied has been paid, and not repaid, on the quantity of oil delivered.

We have no evidence that anyone uses this concession, so are announcing withdrawal on the basis that it is obsolete.

### **Further advice**

If you have any questions about this please contact Steve Clarke on 03000 577317 (email [steve.clarke2@hmrc.gsi.gov.uk](mailto:steve.clarke2@hmrc.gsi.gov.uk))

## **BIM66301 – Remuneration of sub-postmasters**

The remuneration of a sub-postmaster is in law chargeable as employment income. Where, however, a retail trade is carried on from the same premises as the sub-post office, the remuneration as sub-postmaster may in practice be treated as a trade receipt. Where this is done, the officer dealing with the self assessment should ask the processing office to issue code NT for the salary. A note should be kept to make sure the salary is taxed as part of the trade receipts. Where no trade is carried on, or the trade is negligible, the remuneration as sub-postmaster should be charged as employment income.

Where a sub-postmaster also carrying on a trade requests the statutory basis of charge for both sources of income, the remuneration as sub-postmaster should be charged as employment income and excluded from the trade receipts. In such a case, the expenses allowed in the computation of the trade profits should exclude any expenses which relate to the sub-postmaster's employment income; any necessary adjustments should, however, be made on broad lines.

Where a retail trade or business is carried on by a company from the same premises as a sub-post office, the Post Office salary is the income of the sub-postmaster and not of the company. In practice, however, no objection should be raised to a request to treat the Post Office salary as income of the company provided that the sub-postmaster is required to, and does, hand over the remuneration to the company.

The practice of treating the remuneration of a sub-postmaster as a trade receipt of an individual or a company applies for tax purposes only. Class 1 National Insurance Contributions remain payable in respect of the Post Office salary. The amount to be included in computing the trade profits is the gross remuneration before deduction of National Insurance Contributions. National Insurance Contributions are not an allowable deduction either from employment income or from the receipts of the trade.

The Post Office is introducing new contracts for sub-postmasters as part of its transformation programme. The contracts will mean this concession is expected to be largely obsolete by April 2017.

### **Further advice**

If you have any questions about this please contact James Ewington on 03000 553788 (email: [james.ewington@hmrc.gsi.gov.uk](mailto:james.ewington@hmrc.gsi.gov.uk)).

### **3.23 VAT: supplies by Financial Ombudsman Service Ltd to ombudsman authorities**

This concession provides that payments from eight ombudsman authorities for the performance by the Financial Ombudsman Services Ltd (FOS) of the complaint handling duties of the authorities shall not be treated as consideration for any supply in the course of furtherance of any business by FOS.

The payment of any amount at any time by the:

- Office of the Building Societies Ombudsman (OBSO)
- Office of the Banking Ombudsman (OBO)
- Insurance Ombudsman Bureau (IOB)
- Personal Assurance Arbitration Service (PAAS)
- PIA Ombudsman Bureau (PIAOB)
- Office of the Investment Ombudsman Bureau (OIOB)
- SFA Complaints Bureau and Arbitration Service (SFACBAS)
- FSA Independent Investigator (FSII)

to FOS for the supply of services by FOS in connection with the ombudsman and complaint handling scheme duties by OBSO, OBO, IOB, PAAS, PIAOB, OIOB, SFACBAS and FSII (as the case may be) between 1 April 2000 and 1 October 2000 shall not be treated as consideration for any supply in the course of any business carried on by FOS.

This concession was time-limited so is now obsolete.

#### **Further advice**

If you have any questions about this please contact David Ogilvie on 03000 585990 (email [david.ogilvie@hmrc.gsi.gov.uk](mailto:david.ogilvie@hmrc.gsi.gov.uk))

### **3.28 VAT: supplies by Financial Services Authority to self-regulating organisations**

The payment of any amount at any time by the Investment Management Regulatory Organisation (IMRO), the Personal Investment Authority (PIA) or the Securities and Futures Authority (SFA) to the Financial Services Authority (FSA) for the supply by the FSA in the carrying out of the regulatory functions of IMRO, PIA or SFA (as the case may be) between 1 April 1998 and the coming in to effect of the Financial Services and Markets Act 2000 and similar payments by the Registrar of Friendly Societies (RFS) and the Insurance Directorate of HM Treasury (ID) for the supply by FSA in the carrying out of regulatory functions of RFS or ID (as the case may be) between 1 January 1999 and the coming into effect of the Financial Services and Markets Act (FSMA) 2000 shall not be treated as consideration for any supply in the course or furtherance of any business carried on by FSA.

FSMA came into effect on 30 November 2001 so this concession is now obsolete.

#### **Further advice**

If you have any questions about this please contact David Ogilvie on 03000 585990 (email: [david.ogilvie@hmrc.gsi.gov.uk](mailto:david.ogilvie@hmrc.gsi.gov.uk))

### **3.31 VAT: supplies by Financial Service Compensation Scheme Ltd (FSCS) to compensation scheme authorities**

The payment of any amount at any time by the Investors Compensation Scheme (ICS), the Deposit Protection Scheme (DPS), the Building Societies Investor Protection Scheme (BSIPS), the Policyholders Protection Scheme (PPS), the Friendly Societies Protection Scheme (FSPS), and the Section 43 Scheme (S43S) for the supply of services by FSCS in carrying out the compensatory scheme functions of ICS, DPS, BSIPS, PPS, FSPS, and S43S (as the case may be) between 1 February 2001 and the coming into effect of the Financial Services & Markets Act (FSMA) 2000 shall not be treated as consideration for any supply in the course of any business carried on by FSCS.

FSMA came into effect on 30 November 2001 so this concession is now obsolete.

#### **Further advice**

If you have any questions about this please contact David Ogilvie on 03000 585990 (email: [david.ogilvie@hmrc.gsi.gov.uk](mailto:david.ogilvie@hmrc.gsi.gov.uk)).

## Chapter 3 – interim tax impact assessment

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3.1 The nature of ESCs is that, in general, it is not necessary for taxpayers to make any formal claim to HMRC in order to make use of an ESC. This means HMRC has, in many cases, to estimate the extent to which they are used in practice.

3.2 The Government's tax policy making process includes ensuring the expected impacts of policy changes are understood throughout the policy making process.

3.3 This chapter sets out our interim assessment of the potential impacts of withdrawal of the ESCs detailed at chapter 2. Any relevant data we can gather during the withdrawal notice period, particularly from taxpayers affected or groups representing them, will allow HMRC to better validate its interim assessment. Depending on the information available, a final assessment in the form of a tax information and impact note may be published nearer the time planned for the withdrawals to take effect.

### How to contribute

3.4 As outlined at paragraph 3.3 above we welcome comments on our interim assessment of the impacts of these withdrawals. Contributions by 27 January 2016 would be helpful to ensure they can be given sufficient consideration, but contributions after that time may also be taken into account prior to publication of any final tax information and impact note, if applicable.

3.5 Page 2 of this document above sets out how to contribute.

## Summary of impacts

<b>Exchequer impact (£m)</b>	2015-16	2016-17	2017-18	2018-19	2019-20
	-	-	negligible	negligible	negligible
	HMRC has very little information on the use of these concessions, but as most are (or will shortly be) obsolete we do not expect their withdrawal to have a significant impact on tax receipts from April 2017. HMRC would welcome more information from those affected on the likely impacts. Any impact would be subject to scrutiny by the Office for Budget Responsibility.				
<b>Economic impact</b>	No significant economic impacts are anticipated.				
<b>Impact on individuals, households and families</b>	The withdrawal of these concessions is likely to affect a limited number of individuals (and households) and the impact on affected individuals (and households) is anticipated to be negligible. There may be some compliance costs for those currently using the theatre and sub-postmasters concessions if they need to change the way they complete their tax returns. The measure is not expected to impact on family formation, stability or breakdown.				
<b>Equalities impacts</b>	Equalities impacts have been considered and none have been identified.				
<b>Impact on business and civil society organisations</b>	Most of the concessions are believed to be obsolete so withdrawal will have little or no effect on business and civil society organisations. A statutory relief for investment in theatre productions was introduced from 01 September 2014 in Finance Act 2014. The Post Office is introducing new contracts for sub-postmasters meaning the relief provided by the concession at BIM66301 will be largely unnecessary by April 2017. The introduction of the Personal Savings Allowance and consequential removal of the Tax Deduction Scheme for Interest (TDSI) from April 2016 will mean that the concession at A69 will be unnecessary.				
<b>Operational impact (£m) - HMRC</b>	The additional costs/savings for HMRC in implementing this change are anticipated to be negligible.				
<b>Other impacts</b>	Other impacts have been considered and none have been identified.				

## Monitoring and evaluation

The impacts will be monitored through communication with the taxpayer groups affected.