



---

## **Extra-statutory Concessions – Second Technical Consultation on Draft Legislation**

---

**Consultation Document  
15 July 2009**

<b>Subject of this consultation:</b>	The draft legislation needed to give legislative effect to a number of HMRC's extra-statutory concessions (ESCs) following the House of Lords decision in the <i>Wilkinson</i> case.
<b>Scope of this consultation:</b>	This is a technical consultation to ensure that the draft legislation successfully preserves the current tax treatment under the ESCs concerned. Most of the legislation is by Treasury Order made under an enabling provision at section 160 of the Finance Act (FA) 2008, while some is made under powers that existed before the 2008 enabling provision was enacted.
<b>Impact Assessment:</b>	The intention is to do no more than put the existing concessionary tax treatment on a statutory basis so it is expected that there will be no, or only a negligible, impact and therefore an Impact Assessment is not required.
<b>Who should read:</b>	Businesses and other taxpayers who currently benefit from any of the ESCs concerned and their advisors.
<b>Duration:</b>	Wednesday 15 July 2009 to Wednesday 7 October 2009
<b>Responses and any enquiries to:</b>	To – Richard Hopwood, HMRC Central Policy, Room 1/74, 100 Parliament Street, London SW1A 2BQ. Telephone 020 7147 2424 Fax 020 7147 2375 e-mail: <a href="mailto:tap@hmrc.gsi.gov.uk">tap@hmrc.gsi.gov.uk</a>
<b>Additional ways to become involved:</b>	Some ESCs may deal with particular circumstances or have relevance to a particular sector. In such instances, where there are known representative bodies for the customers concerned HMRC will contact them regarding this consultation.
<b>After the consultation:</b>	Following this consultation HMRC will publish a summary of responses.
<b>Getting to this stage:</b>	Following the House of Lords judgment in the <i>Wilkinson</i> case HMRC has been reviewing its ESCs. This is the second consultation on legislation to be made under section 160 FA 2008 (the first consultation was launched on 3 November 2008).
<b>Previous engagement:</b>	Explanatory notes on section 160 FA 2008, which provides the vires to enact existing concessions by Treasury order, can be found on the HM Treasury website. The first consultation on ESCs can be found on the HMRC website ( <a href="http://www.hmrc.gov.uk/consultations/index.htm">http://www.hmrc.gov.uk/consultations/index.htm</a> )

---

# Contents

		Page
Chapter 1	Background and scope	4
Chapter 2	The consultation process	7
Chapter 3	Text of the ESCs and the draft legislation	8
Annex A	The Government's Consultation Code of Practice	45

# 1. Background and scope

---

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 published concession from the statutory tax treatment. It is not limited to concessions published in the former Inland Revenue booklet IR1 and the former HM Customs and Excise booklet Notice 48.

1.2 The House of Lords' decision in the *Wilkinson* case<sup>1</sup> made clear that the scope of HM Revenue & Customs' (HMRC) administrative discretion to make concessions that depart from the strict statutory position is not as wide as previously thought.

1.3 In light of that decision, HMRC is reviewing its concessions. The indications are that most ESCs will be able to continue in their current form as they are within the scope of HMRC's administrative discretion. Where an existing concession exceeds the scope of the discretion of the *Wilkinson* judgment the effect of the concession will be maintained by putting it on to a legislative basis where it is appropriate to do so.

1.4 Section 160 FA 2008 provides an enabling power which allows the tax treatment afforded by existing concessions to be legislated by Treasury order. This enabling power was used to legislate 16 concessions, which came into effect in April 2009<sup>2</sup> (3 concessions were legislated using other, already existing powers).

1.5 As part of the review each concession will be considered carefully and, while the aim is to retain as many concessions as possible, some ESCs may no longer be required and it may not be possible to legislate for the effect of some others that appear to be beyond the scope of HMRC's discretion. These ESCs may, therefore, need to be withdrawn.

1.6 Where an ESC has to be withdrawn, HMRC recognise that taxpayers may wish to review their affairs 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. Budget 2009 announced 10 ESCs will be withdrawn from 1 April 2010 as part of the review.<sup>3</sup>

## Scope of this consultation

1.7 The purpose of this consultation is to expose for comment draft legislation which is intended to maintain the existing tax treatment provided under the ESCs concerned. The consultation, which is of a technical nature, is designed to ensure that the legislation as drafted will successfully maintain the purposes and effects of the existing ESC HMRC therefore welcomes comments on whether the legislation as drafted will achieve that aim. The Treasury Order is expected to be laid in late 2009.

---

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

<sup>2</sup> The Enactment of Extra-Statutory Concessions Order 2009, the Value Added Tax (Place of Supply of Goods) Order 2009 and the Value Added Tax (Input Tax) (Amendment) Order 2009 commenced 6 April 2009. The Insurance Premium Tax (Amendment of Schedule 6A to the Finance Act 1994) Order 2009 commenced 1 April 2009.

<sup>3</sup> <http://www.hmrc.gov.uk/budget2009/withdrawl-esc-6400.pdf>

1.8 For certain ESCs, powers existed before FA 2008 to legislate their effect and these existing powers will be used instead of section 160 FA 2008 to avoid possible legislative complications in future. These ESCs are shown below.

### Impact Assessment

1.9 It is usual practice for consultation documents to be accompanied by an Impact Assessment. There is no impact assessment in this case because, as the intention is to do no more than put the existing concessionary tax treatment on a statutory basis, there should be no, or only a negligible, impact as a result of the proposed legislation.

### Way forward

1.10 The ongoing review by HMRC of its ESCs has identified the need to legislate some ESCs which are referred to in this technical consultation. As the review continues we expect further such consultation on other ESCs that appear to exceed the scope of HMRC's discretion. In each case, we will consult on the draft legislation to ensure it gives effect to the existing concessionary tax treatment.

- 1.11 This document sets out for each of a number of existing ESCs listed below -
- A. The text of the ESC.
  - B. Draft legislation to give legislative effect to the tax treatment afforded by that ESC.
  - C. An outline explanation of the draft legislation.

<b>ESC to be legislated by order under section 160 FA 2008</b>	<b>Tax/Duty</b>	<b>Page</b>
A61: Clergymen's heating and lighting etc expenses	Income Tax	8
A68: Payments out of a discretionary trust which are taxable as employment income	Income Tax	10
B10: Income of contemplative communities or of their members	Corporation Tax	14
B47: Furnished lettings of dwelling houses - wear and tear of furniture	Income Tax / Corporation Tax	19
D26: Relief for exchanges of joint interests	Capital Gains Tax	24
D44: Rebasing and indexation: shares derived from larger holdings held at 31 March 1982	Capital Gains Tax	30
D50: Treatment of compensation	Capital Gains Tax	34
Estimated Gift Aid donations by companies	Corporation Tax	38

<b><u>ESCs to be legislated using other powers (not section 160 FA 2008)</u></b>		40
A61: Clergymen's heating and lighting etc expenses; National Insurance element	NIC	40
Zero rating of nurses' prescriptions by pharmacists	VAT	41
GP dispensing	VAT	41

## 2. The consultation process

---

### How to respond

2.1 Comments on the effectiveness of translating the tax effects of the concessions listed above into legislation should be sent by 7 October 2009 to Richard Hopwood:  
by post - HMRC Central Policy, Room 1/74, 100 Parliament Street, London SW1A 2BQ  
by e-mail - [tap@hmrc.gsi.gov.uk](mailto:tap@hmrc.gsi.gov.uk)  
by fax – 020 7147 2375.

Telephone enquiries to 020 7147 2424

2.2 Paper copies of this document may be obtained free of charge from the above address. This document can also be accessed from the HMRC Internet site at <http://www.hmrc.gov.uk/consultations/index.htm>. All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

2.3 When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

### Confidentiality

2.4 Information provided in response to this consultation, 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.

2.5 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).

2.6 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.

### The Government's Consultation Code of Practice

2.7 This consultation is being conducted in accordance with Government's Code of Practice on Consultation. A copy of the Code of Practice criteria and a contact for any comments on the consultation process can be found in Annex A.

### 3. Text of ESCs and draft legislation

---

#### **A61: Clergymen's heating and lighting etc expenses**

##### ESC Text

Where a clergyman or minister of any religious denomination is provided, in consequence of his being the holder of such office, with a residence in premises owned or leased by a charity or ecclesiastical corporation from which to perform his duties, no tax is charged on sums paid on his behalf or reimbursed in respect of heating, lighting, cleaning and gardening expenses which are the contractual liability of the clergyman or minister.

Where an allowance is paid to the clergyman etc to meet such costs it will not be taxed except to the extent that it exceeds the costs actually incurred.

The concession does not apply where the clergyman or minister is not in lower-paid employment as defined at section 217(1) ITEPA 2003.

##### Draft Legislation

#### **Amendment of Income Tax (Earnings and Pensions) Act 2003**

- (1) The Income Tax (Earnings and Pensions) Act 2003<sup>(4)</sup> is amended as follows.
- (2) In step 1 in section 218(1)<sup>(5)</sup>, after “exempt income” insert at the end “, other than any attributable to section 290A or 290B (accommodation outgoings of ministers of religion)”.
- (3) After section 290 insert—

##### **“290A Accommodation outgoings of ministers of religion**

(1) No liability to income tax arises in respect of a person in lower-paid employment as a minister of a religious denomination by virtue of the payment or reimbursement of accommodation outgoings.

(2) Subsection (1) does not apply if the minister is paid an allowance intended to be used, wholly or in part, for paying accommodation outgoings (as to which see section 290B).

(3) In this section—

“accommodation outgoings” means amounts incurred by the minister in—

- (a) heating, lighting or cleaning qualifying premises; or
- (b) maintaining a garden forming part of qualifying premises;

“lower-paid employment” has the meaning given by section 217;

“qualifying premises” has the same meaning as in section 290<sup>(6)</sup>.

---

<sup>(4)</sup> 2003 c. 1.

<sup>(5)</sup> Step 1 in section 218(1) was amended by paragraph 5 of Schedule 3 to the Finance Act 2007 (c. 11).

<sup>(6)</sup> Section 290(4) specifies the premises that are qualifying premises.

## **290B Allowances paid to ministers of religion in respect of accommodation outgoings**

(1) This section applies where a person in lower-paid employment as a minister of a religious denomination is paid an allowance intended to be used, wholly or in part, for paying accommodation outgoings.

(2) No liability to tax arises by virtue of the payment of the allowance to the extent that it is used for paying accommodation outgoings.

(3) In this section—

“accommodation outgoings” and “lower-paid employment” have the same meaning as in section 290A;

“qualifying premises” has the same meaning as in section 290<sup>(7)</sup>.”.

Further draft provisions which legislate an equivalent exemption in relation to National Insurance contributions are to be implemented by regulations, and are set out in the section at page 40 “ESCs to be legislated using other powers (not section 160 of the Finance Act 2008)”.

### Explanation

This concession was published formally for the first time in a Press Release on 8 August 1986.

Generally, if an employer meets or reimburses an employee's heating, lighting, cleaning or gardening costs in respect of the employee's own home, or provides an allowance for meeting such expenses, this is treated as part of the employee's income and taxed accordingly.

By concession, however, it had been accepted for many years that no charge arises in the case of such expenses (except for those who earn at a rate of £8,500 or more per annum) in respect of accommodation provided for a minister of religion because of their office or employment.

In effect, the concession created a right of deduction applying in addition to that in section 315(3)(b) ITEPA 2003, which is for ministers' expenses in relation to the upkeep of living accommodation, but only above a certain threshold.

The legislation inserts a new section, 290A in ITEPA 2003 to ensure that no tax charge arises on the heating, lighting, cleaning or gardening costs paid for or on behalf of a minister living in qualifying accommodation and earning below £8,500. A new section 290B provides equivalent exemption for an allowance applied to those purposes.

An amendment to section 218 ITEPA ensures that for the purpose of calculating whether a minister has earnings of at least £8,500 per annum, these reimbursements, allowances or payments are included in the minister's income.

---

<sup>(7)</sup> Section 290(4) specifies the premises that are qualifying premises.

## **A68: Payments out of a discretionary trust which are taxable as employment income**

### **ESC Text**

*Note: (the references to s687(2) and (3) are now read as references to ss494 and 497 ITA 2007)*

Employee trusts are discretionary trusts created by funds provided by employers for the benefit of their employees, past, present or future, or for the benefit of any dependants or relations of such employees. Where a payment made by the trustees in exercise of any discretion is treated as being assessable to tax as employment income, TA 1988 s 687(2) does not operate to give the recipient credit for the tax at the rate suffered by the trustees. This means the payment is effectively taxed twice.

Subject to a claim by the trustees and the conditions set out below, a payment will be made to them equal to the lesser of—

- (a) tax on the total payments made in any year of assessment which are treated as employment income in that way; the rate of tax being the rate applicable to trusts in force for that year, and
- (b) the total tax which the trustees would have available under s 687(3) to set against any payments made in that year to which s 687(2) applied (so far as not already allowed), the “tax pool”.

The conditions are that the trustees must—

- have submitted, for each year for which tax has entered the “tax pool”, a return of all trust income received and all payments made to beneficiaries,
- supply evidence that they have paid (by deduction or otherwise) tax of at least the amount to be paid to them, and
- agree that the “tax pool” should be reduced by the amount to be paid.

As the payment is compensation for the lack of a credit to the employees under s 687(2)(a), no repayment supplement will be added to it.

### **Draft Legislation**

#### **Discretionary payments by trustees: employment income**

- (1) Part 9 of the Income Tax Act 2007<sup>(8)</sup> (settlements and trustees) is amended as follows.
- (2) Before section 493 (discretionary payments by trustees) insert—  
“*Payments constituting income of beneficiary (other than employment income)*”.
- (3) After section 496 insert—  
“*Payments constituting employment income of beneficiary*”

#### **496A Discretionary payments by trustees: employment income**

- (1) Section 496B<sup>(9)</sup> applies if—

---

<sup>(8)</sup> 2007 c.3. There have been no relevant amendments to Part 9.

<sup>(9)</sup> Section 496B is added to the Income Tax Act 2007 by paragraph (3) of this Article.

- (a) in a tax year the trustees of a settlement make a discretionary employment income payment, and
  - (b) the trustees are UK resident for the tax year.
- (2) In this section and section 496B, “discretionary employment income payment” means a payment to a person (“the beneficiary”) that—
- (a) is made in the exercise of a discretion (whether exercisable by the trustees or any other person),
  - (b) is made out of income, and
  - (c) meets conditions A and B.
- (3) Condition A is that what is paid to the beneficiary—
- (a) is, only because of the payment, employment income of the beneficiary, but
  - (b) is not exempt income (as defined in section 8 of ITEPA 2003<sup>(10)</sup>).
- (4) Condition B is that the payment is made at a time when the settlement is an employee benefit settlement.
- (5) A settlement is an employee benefit settlement if the trusts on which the settled property is held do not permit the settled property to be applied otherwise than—
- (a) for the benefit of persons of one or more relevant classes, or
  - (b) for the benefit of such persons and for charitable purposes.
- (6) “Relevant class” means a class defined by reference to one or more of the following—
- (a) employment in a particular trade or profession,
  - (b) employment by, or holding office with, a body carrying on a trade, profession or undertaking, or
  - (c) marriage to or civil partnership with, or relationship to, or dependence on, persons of a class mentioned in paragraph (a) or (b).
- (7) Where the trusts on which the settled property is held do not permit the settled property to be applied otherwise than as described in subsection (5) during a period (however defined), the settlement is an employee benefit settlement during (and only during) that period.

#### **496B Relief for trustees**

(1) The trustees are entitled (on making a claim in respect of a tax year) to repayment of an amount of income tax equal to the lesser of amount A and amount B.

(2) Amount A is—

$$DEIP \times TR$$

where—

DEIP is the total of the discretionary employment income payments made by the trustees in the tax year, and

TR is the trust rate in force for the tax year.

---

<sup>(10)</sup> Section 165(1) defines “ITEPA 2003” as meaning the Income Tax (Employment and Pensions Act) 2003 (2003 c.1).

(3) Amount B is the amount of the trustees' tax pool available for the tax year (see section 497) reduced (but not so that it goes below nil) by the total amount of income tax (if any) treated under section 494 as having been paid as a result of payments made by the trustees in the tax year.

(4) A claim under this section may not be made before the end of the tax year to which it relates.

*Tax pool*.

(4) In section 497(1) (calculation of trustees' tax pool), in Step 1—

(a) after “nil” insert “—

(a) ”, and

(b) insert at the end “, and

(b) the amount to which the trustees are entitled under section 496B in respect of the previous tax year.”

(5) In section 504(5)<sup>(11)</sup> (treatment of income of unauthorised unit trust), for “and 495” substitute “, 495 and 496B”.

(6) In section 824(3) of the Income and Corporation Taxes Act 1988<sup>(12)</sup> (repayment supplements: individuals and others)—

(a) after paragraph (ab) insert—

“(ac) if the repayment is a repayment as a result of a claim under section 496B of ITA 2007<sup>(13)</sup> (relief for payments by discretionary trust taxable as employment income), the relevant time is the 31 January next following the end of the tax year to which the claim relates;”, and

(b) in paragraph (a)(ii), insert at the end “(other than a repayment within paragraph (ac))”.

(7) [In Part 2 of Schedule 54 to the Finance Act 2009<sup>(14)</sup> (repayment interest: special provision as to repayment interest start date), after paragraph 9 insert—

*“Tax on payments out of discretionary trust taxable as employment income*

**9A.** In the case of a repayment made in consequence of a claim under section 496B of ITA 2007 (relief for payments by discretionary trust taxable as employment income) the repayment interest start date is 31 January next following the end of the tax year to which the claim relates.”]

---

<sup>(11)</sup> There have been amendments to s504, but none are relevant here.

<sup>(12)</sup> 1988 c.1. Section 824 refers to “the Board”. Section 832(1) provides that “the Board” means “the Commissioners of Inland Revenue”; by section 50 (1) Commissioners for Revenue and Customs Act 2005 (2005 c. 11), that is to be taken as a reference to the Commissioners for Her Majesty's Revenue and Customs. Section 828(3) has been amended by section 196 of and Schedule 19 (paragraph 41(2)) to the Finance Act 1994, section 92 of the Finance Act 1997, section 41 of the Finance Act 1999, and section 90 of the Finance Act 2001.

<sup>(13)</sup> Section 496B is added to Income Tax Act 2007 by paragraph (3) of this Article.

<sup>(14)</sup> [2009 c. [ ]. Sections 101 to 104 of, and Schedules 53 and 54 to, the Finance Act 2009 contain a new regime for the payment of interest, including interest on sums to be paid by Her Majesty's Revenue and Customs. The new regime will come into force on such day or days as the Treasury may by order appoint (section 104(3)). The new regime will replace existing provisions about interest, including section 824 of the Income and Corporation Taxes Act 1988. Schedule 54 includes a restatement of provisions of that section, which is expected to be repealed by order (section 104(5) and (6)).]

(8) The amendment made by paragraph (3) has effect in relation to payments made by trustees on or after 6 April 2010.

(9) The amendment made by paragraph (4) has effect for the tax year 2011-12 and subsequent tax years.

(10) The other amendments made by this article have effect for the tax year 2010-11 and subsequent tax years.

(11) Where the trustees of an employee benefit settlement (as defined in section 496A of the Income Tax Act 2007) agree, or have agreed, that the trustees' tax pool available for the tax year 2009-10 or a preceding tax year should be reduced by an amount, that tax pool is to be, or to continue to be, reduced by that amount (even though that reduction is not mentioned in Step 1 of section 497(1) of the Income Tax Act 2007).

### Explanation

The concession allows trustees of employee benefit trusts to claim payments in order to alleviate the effect of a double charge to tax on trust income.

An employee benefit trust is, broadly, a discretionary trust, which provides benefits to employees of a particular business, or their dependants. Trustees of a discretionary trust are liable to income tax on trust income at the special trust rates of tax (currently 32.5 per cent for dividend income and 40 per cent for other income). When the trustees make a discretionary payment out of income to a beneficiary, the latter is given a credit for the tax that the trustee has already paid on that income. This credit covers the beneficiary's liability and so avoids the income being taxed twice.

However discretionary payments made to employees as beneficiaries of an employee benefit trust are treated as 'employment income' in the hands of those employees and they receive no credit for the tax paid by the trustees on the underlying income. Tax is effectively suffered twice, firstly in the hands of the trustees on trust income and again in the hands of the employee/beneficiary where the discretionary payment made out of that trust income is taxed as employment income. The concession removes this double charge by allowing the trustees to claim a compensation payment equivalent to the tax paid by them on the trust income.

The legislation provides for a new statutory entitlement to income tax relief for trustees of employee benefit trusts in these circumstances. The new legislation provides that in future relief will also be available where some or all of the trust capital of the employee benefit trust has been provided by someone other than the employer. The claim process will be brought into the Self Assessment system which will provide administrative benefits both for trustees and for HMRC. In contrast to the concession, the repayment under the legislation will be of income tax and, as a result, repayment supplement will also be available on the repayments made to the trustees, where appropriate.

The draft legislation provisionally includes an amendment of Schedule 54 to the Finance Act 2009. This will need further consideration.

## **B10: Income of contemplative communities or of their members**

### **ESC Text**

The precise legal position regarding the title to such income, which is in fact treated by the community as belonging to the common fund, is often difficult to ascertain. In practice in the case of certain Orders (such as those engaged in charitable work among the poor) relief is given under the provisions relating to charities: in the case of the Contemplative Orders which are not in law capable of being regarded as charities, a proportion of the aggregate income not exceeding a specified sum per monk or nun (representing the amount applied for the maintenance of each individual) is regarded as his or her income for the purpose of relief from tax. With effect from the 1995-96 tax year the allowable figure will be equal to the basic personal tax allowance for each year. Where in any year the aggregate of the “allowable figures” exceeds the community’s income, the excess may be set against chargeable gains of that year.

Any excess of the aggregate of “allowable figures” over a community’s income or gains may no longer be carried forward and set against gains of a subsequent year. However, any excess amount remaining from years up to and including 1994-95 may be carried forward until exhausted.

### **Draft Legislation**

#### **Amendments to the Income and Corporation Taxes Act 1988**

“In the Income and Corporation Taxes Act 1988, after section 507 insert—

##### **“507A Contemplative religious communities: profits exempt from corporation tax**

(1) Subsection (2) applies in a case where members of a qualifying contemplative religious community transfer all their income and assets, or covenant all their income, to the community (“the independent community”) (and for this purpose it is irrelevant whether or not the community is part of an order or religious institution).

(2) As respects each chargeable period of the independent community, and each person who is a qualifying member of the independent community at any time in that period, the independent community shall be treated for the purposes of corporation tax as if an amount of its profits for the chargeable period equal to the relevant amount (see subsections (5) to (7)) were income of the qualifying member.

(3) Subsection (4) applies in a case where—

(a) one or more qualifying contemplative religious communities (“constituent communities”) are part of an order or religious institution (“the parent body”), and

(b) members of the constituent communities transfer all their income and assets, or covenant all their income, to the parent body.

(4) As respects each chargeable period of the parent body, and each person who is a qualifying member of a constituent community at any time in that period, the parent body shall be treated for the purposes of corporation tax as if an amount of its profits for the chargeable period equal to the relevant amount (see subsections (5) to (7)) were income of the qualifying member.

(5) For the purposes of subsections (2) and (4), the relevant amount, in relation to a chargeable period, is the amount of the annual personal allowance for persons under 65 (see section 35 of ITA 2007) for—

- (a) the tax year which begins in the chargeable period, or
- (b) if no tax year begins in the chargeable period, the tax year which is current when the chargeable period begins.

(6) But, if the chargeable period is less than 12 months, the relevant amount is—

$$\frac{P}{365} \times A$$

where—

P is the number of days in the chargeable period;

A is the amount determined under subsection (5) in relation to the chargeable period.

(7) If, during the chargeable period, an individual ceases to be a qualifying member of the independent community or a constituent community (otherwise than on death), the relevant amount, in relation to the chargeable period and that qualifying member, is—

$$\frac{Q}{P} \times B$$

where—

Q is the number of days in the chargeable period for which the individual is a qualifying member of the independent community or constituent community;

P is the number of days in the chargeable period;

B is the amount determined under subsection (5), or subsections (5) and (6), in relation to the chargeable period.

(8) So far as the exemption from corporation tax conferred by this section calls for repayment of tax, no repayment shall be made except on a claim made by the independent community or parent body.

(9) In a case where a member of an independent community or constituent community—

- (a) has transferred or covenanted income to the community (in the case of an independent community) or the parent body (in the case of a constituent community), and
- (b) has income for a tax year which does not exceed 20% of the annual personal allowance for persons under 65 (see section 35 of ITA 2007) for that tax year,

the member is, for the purposes of this section, to be taken to have transferred or covenanted all his or her income for that tax year to the community or parent body.

(10) For the purposes of this section a contemplative religious community is a “qualifying” contemplative religious community if—

- (a) the community is established in the United Kingdom,
- (b) the members of the community live and practise their religion in a communal establishment, and

- (c) the community is not a charity, but the religion that is professed by the members of the community does not prevent the community from being a charity.

(11) In this section—

“member”, in relation to a religious community, means an individual who—

- (a) is living in the community, and
- (b) has taken vows or made equivalent commitments (whether probationary or not);

“qualifying member”, in relation to a religious community, means a member of the community who—

- (a) has been a member of the community for a period of at least six months, and
- (b) has transferred all his or her income and assets, or covenanted all his or her income, to the community (in the case of an independent community) or the parent body (in the case of a constituent community).

### **507B Contemplative religious communities: gains exempt from corporation tax**

(1) Subsection (2) applies if, as respects a chargeable period—

- (a) section 507A(2) applies in relation to an independent community,
- (b) the profits of the independent community in the chargeable period are less than the total of the amounts that fall to be treated as income of the qualifying members of the community in accordance with section 507A(2), and
- (c) the independent community has chargeable gains in the chargeable period.

(2) As respects the chargeable period and each qualifying member of the independent community, the community shall be treated for the purposes of corporation tax as if the relevant amount of its chargeable gains for that period were income of the qualifying member.

(3) Subsection (4) applies if, as respects a chargeable period—

- (a) section 507A(4) applies in relation to a parent body,
- (b) the profits of the parent body in the chargeable period are less than the total of the amounts that fall to be treated as income of the qualifying members of the constituent communities in accordance with section 507A(4), and
- (c) the parent body has chargeable gains in the chargeable period.

(4) As respects the chargeable period and each qualifying member of a constituent community, the parent body shall be treated for the purposes of corporation tax as if the relevant amount of its chargeable gains for that period were income of the qualifying member.

(5) For the purposes of subsections (2) and (4), the relevant amount, in relation to a qualifying member of the independent community or a constituent community, is the smaller of—

- (a) the shortfall in profits, and
- (b) the average gain.

(6) The shortfall in profits is the difference between—

- (a) the relevant amount determined under section 507A(5) to (7) in relation to the qualifying member, and
- (b) the amount that has actually been treated as the income of the qualifying member.

(7) The average gain is—

$$\frac{G}{N}$$

where—

G is the amount of the chargeable gains which the independent community or parent body has in the chargeable period;

N is the number calculated by adding together the relevant value for each qualifying member of the independent community or constituent communities who, under section 507A(2) or (4), falls to be treated as having income.

(8) For the purposes of calculating “N” in subsection (7)—

- (a) the relevant value for a qualifying member is 1;
- (b) but, if section 507A(7) applies in relation to the qualifying member, the relevant value for that member is—

$$1 \times \frac{Q}{P}$$

where Q and P have the same meanings as in section 507A(7).

(9) So far as the exemption from corporation tax conferred by this section calls for repayment of tax, no repayment shall be made except on a claim made by the independent community or parent body.”

### Explanation

It is likely that most contemplative communities are non-charitable. Members have normally covenanted all their income and donated all their assets to the community or the Order and it is not therefore possible to tax the members. The income of these communities is typically not large and a large proportion will be donated.

This concession allows a fixed amount of the community's income to be treated as the income of the individual members for the purpose of relieving it from tax. This is referred to as 'community relief' which is calculated as -

The number of members in the community multiplied by the income tax personal allowance.

Any amount above this would be liable to corporation tax (CT). HMRC consider that contemplative communities are constituted as unincorporated associations and therefore fall within the charge to tax under the CT regime. If this position is incorrect, please advise accordingly.

This is not a method of giving basic personal allowance to the community as personal allowance is non-transferable. Community Relief is an extra statutory allowance of a sum for the maintenance of the community members which is deemed to be equal to the personal allowance. Those community members that qualify for an alternative personal allowance, say the aged-related allowances, 'count' for the purposes of this concession

and the community receives community relief in respect of them, but at the basic personal allowance rate.

## **B47: Furnished lettings of dwelling houses - wear and tear of furniture**

### *ESC Text*

1. Sections 35(2) Capital Allowances Act 2001 specifically exclude a claim for capital allowances on plant or machinery let for use in a dwelling house. Accordingly, capital allowances are not due on furniture and furnishings where the income from letting of furnished houses is assessable under section 260 of Income Tax (Trading and Other Income) Act 2005 (or Case VI, Schedule D for income tax cases up to 1994/95 and periods before 1 April 1988 for corporation tax) and is outside the scope of section 503, ICTA 1988 (furnished holiday lettings) and section 327 of Income Tax (Trading and Other Income) Act 2005.

2. In practice, an allowance for wear and tear may be made, where capital allowances are not due, by deducting 10 per cent of the net rent received. For this purpose the rent is reduced by any part of the occupier's council tax and water rates which the landlord pays. If the rental includes payments for services which would normally be borne by a tenant and the amounts involved are material, these too should be subtracted before calculating the 10 per cent deduction.

3. Where the 10 per cent deduction is allowed, no further deduction is given for the cost of renewing furniture or furnishings, including suites, beds, carpets, curtains, linen, crockery, or cutlery. Nor is a further deduction allowed for chattels of a type which, in unfurnished accommodation, a tenant would normally provide for himself (for example, cookers, washing machines, and dishwashers).

4. However, in addition to the 10 per cent allowance, the landlord can also claim the cost of renewing fixtures which are an integral part of the buildings, and which are revenue repairs to the fabric. These are fixtures which would not normally be removed by either tenant or owner if the property were vacated or sold (for example, baths, washbasins, toilets). Expenditure on renewing such items may be treated as expenditure on repairs even though the 10 per cent allowance has been claimed.

5. As an alternative to the 10 per cent allowance, the actual cost of renewing furniture, furnishings and chattels may be claimed as a deduction. The amount to be allowed is the actual cost of the replacements excluding any additions or improvements, and after deducting the scrap value or sale price of the items replaced. The cost of the original items is not expenditure on renewals and is not allowable.

6. Whichever basis a taxpayer chooses to adopt should be consistently applied to all furnished properties rented out.

7. Before 1975-76, when the 10 per cent basis started, there were several bases in common use. HMRC will not disturb these so long as the let properties remain in the same ownership. Any properties acquired subsequently should be dealt with on one of the two bases described above.

Draft Legislation

**Amendment of Chapter 5 of Part 3 of the Income Tax (Trading and Other Income) Act 2005**

1. In the Income Tax (Trading and Other Income) Act 2005<sup>(15)</sup>, after section 308 (furnished lettings) insert—

*“Furnished accommodation: wear and tear allowance*

**308A Wear and tear allowance: election**

(1) A person carrying on a property business in a tax year may make an election (a “wear and tear allowance election”) in relation to the business for the year.

(2) A wear and tear allowance election for a tax year—

(a) must be made by being included in the person’s return under section 8 (personal return), 8A (trustee’s return) or 12AA (partnership return) of TMA 1970 for the year (and may be included in the return originally made or by amendment), and

(b) may be withdrawn by the person only by amending that return.

(3) For the effect of a wear and tear allowance election, see section 308B.

(4) A wear and tear allowance election made in relation to a business is of no effect so far as the business consists of the commercial letting of furnished holiday accommodation (within the meaning of Chapter 6 of Part 3).

**308B Wear and tear allowance: effect of election**

(1) This section applies where a person (“P”) makes a wear and tear allowance election that has effect in relation to a property business (“the property business”) for a tax year (“the tax year”).

(2) In calculating the profits of the property business for the tax year—

(a) a wear and tear allowance is allowed as a deduction, and

(b) no deduction is allowed—

(i) under section 68 (trade tools) in respect of any tool that is used for the purposes of any relevant furnished letting in the tax year, or

(ii) under section 308(1)(b) (furniture) in respect of furniture that is subject to any relevant furnished letting in the tax year.

(3) For the purposes of this section a furnished letting is “relevant”, in relation to a tax year, if—

(a) it is of premises that consist of or include a dwelling-house, and

(b) at all times at which the premises are let in the tax year, the dwelling-house contains sufficient furniture, furnishings and equipment for normal residential use.

(4) The amount of the wear and tear allowance is 10% of the relevant rental amount.

(5) In subsection (4) “the relevant rental amount”—

---

<sup>(15)</sup> 2005 c. 5.

- (a) means the sum of the amounts receivable by P in the tax year in respect of relevant furnished lettings, but
- (b) does not include any amount so far as it meets condition A or B.
- (6) An amount receivable by P in the tax year in respect of a relevant furnished letting meets condition A if it is attributable to costs borne by P in respect of council tax, utilities or anything else the costs of which are, in the case of a furnished letting, normally borne by the lessee.
- (7) An amount receivable by P in the tax year in respect of a relevant furnished letting meets condition B if an equivalent amount is payable by P to another person in the tax year in respect of another relevant furnished letting of the same premises.
- (8) In this section “furnished letting” has the same meaning as in section 308.”

### **Amendment of section 327 of the Income Tax (Trading and Other Income) Act 2005**

2. In section 327 of the Income Tax (Trading and Other Income) Act 2005 (separate profit calculations), in subsection (2), at the end of paragraph (b) insert—

“, or

- (c) an election is made in relation to the business under section 308A of this Act.”

### **Amendment of Chapter 5 of Part 4 of the Corporation Tax Act 2009**

3. In the Corporation Tax Act 2009<sup>(16)</sup> after section 248 (furnished lettings) insert—

*“Furnished accommodation: wear and tear allowance*

#### **248A Wear and tear allowance: election**

(1) A company carrying on a property business in an accounting period may make an election (a “wear and tear allowance election”) in relation to the business for the period.

(2) A wear and tear allowance election for an accounting period—

- (a) must be made by being included in the company’s tax return for the period (and may be included in the return originally made or by amendment), and
- (b) may be withdrawn by the company only by amending that return.

(3) For the effect of a wear and tear allowance election, see section 248B.

(4) A wear and tear allowance election made in relation to a business is of no effect so far as the business consists of the commercial letting of furnished holiday accommodation (within the meaning of Chapter 4 of Part 6).

#### **248B Wear and tear allowance: effect of election**

(1) This section applies where a company (“P”) makes a wear and tear allowance election that has effect in relation to a property business (“the property business”) for an accounting period (the “accounting period”).

---

<sup>(16)</sup> 2009 c. 4.

- (2) In calculating the profits of the property business for the accounting period—
  - (a) a wear and tear allowance is allowed as a deduction, and
  - (b) no deduction is allowed—
    - (i) under section 68 (trade tools) in respect of any tool that is used for the purposes of any relevant furnished letting in the accounting period, or
    - (ii) under section 248(1)(b) (furniture) in respect of furniture that is subject to any relevant furnished letting in the accounting period.
- (3) For the purposes of this section a furnished letting is “relevant”, in relation to an accounting period, if—
  - (a) it is of premises that consist of or include a dwelling-house, and
  - (b) at all times at which the premises are let in the accounting period, the dwelling-house contains sufficient furniture, furnishings and equipment for normal residential use.
- (4) The amount of the wear and tear allowance is 10% of the relevant rental amount.
- (5) In subsection (4) “the relevant rental amount”—
  - (a) means the sum of the amounts receivable by P in the accounting period in respect of relevant furnished lettings, but
  - (b) does not include any amount so far as it meets condition A or B.
- (6) An amount receivable by P in the accounting period in respect of a relevant furnished letting meets condition A if it is attributable to costs borne by P in respect of council tax, utilities or anything else the costs of which are, in the case of a furnished letting, normally borne by the lessee.
- (7) An amount receivable by P in the accounting period in respect of a relevant furnished letting meets condition B if an equivalent amount is payable by P to another person in the accounting period in respect of another relevant furnished letting of the same premises.
- (8) In this section “furnished letting” has the same meaning as in section 248.”

#### **Amendment of Chapter 6 of Part 4 of the Corporation Tax Act 2009**

#### **Amendment of section 269 of the Corporation Tax Act 2009**

**4.** In section 269 of the Corporation Tax Act 2009 (separate profit calculations), in subsection (2), at the end of paragraph (b) insert—

“, or

- (c) an election is made in relation to the business under section 248A of this Act.”.

#### **Explanation**

A person letting a furnished dwelling house may claim a deduction for the wear and tear allowance when computing their taxable profits. The allowance is available to those who are chargeable to income tax or corporation tax on their income from property, e.g. companies, partnerships and individuals. A wear and tear allowance election must be made in a return, or amended return.

The wear and tear allowance is equal to 10 per cent of net rents.

Net rent means the total rent received from the furnished dwelling house less any amounts paid by the landlord that would ordinarily be met by a tenant of a furnished dwelling house (e.g. council tax or utility bills). Where a person both pays and receives rent for the same furnished dwelling house, the rent payable must also be deducted from the total rent.

The allowance is intended to cover the cost of renewing the furniture or furnishings that tenants would normally provide for themselves in unfurnished accommodation. This will include items such as suites, beds, carpets, curtains, linen, crockery, cutlery, cookers, washing machines, dishwashers etc. Where the 10 per cent deduction is claimed, no further deduction is given for the cost for such items.

The wear and tear allowance may not be claimed if a deduction has been claimed for the replacement and alteration of trade tools or expenses incurred in connection with the provision of furniture.

The wear and tear allowance does not currently apply to the commercial letting of furnished holiday accommodation.

Notes:

The text of the original concession referred to the renewals basis being available instead of the wear and tear allowance. The renewals basis is a separate concessionary practice, and is being considered as part of the ongoing review of extra-statutory concessions. A further announcement will be made about this concession in due course.

Where a person both pays and receives rent for a furnished dwelling house, the rent payable must be deducted from the rent receivable to arrive at the net rent. The ESC makes no provision for this situation. The effect of the provision is that everyone who lets a furnished dwelling house will be able to claim the wear and tear allowance, but the allowance will be reduced to take into account rent paid, as well as amounts which would normally be paid by the tenant. We welcome comments on this change.

Under the ESC, the wear and tear allowance does not apply to the commercial letting of furnished holiday accommodation, as capital allowances can be claimed. The draft issued reflects the current position. The government has announced its intention to repeal the legislation relating to furnished holiday accommodation (the FHL rules) from April 2010. The intention is to remove the restriction to the wear and tear allowance for furnished holiday accommodation as part of the wider repeal of the FHL rules.

## **D26: Relief for exchanges of joint interests**

### **ESC Text**

Where interests in land which is in the joint beneficial ownership of two or more persons are exchanged after 19 December 1984, and

**either**

- a holding of land is held jointly, and, as a result of the exchange, each joint owner becomes sole owner or part of the land formerly owned jointly,

**or**

- a number of separate holdings of land are held jointly, and, as a result of the exchange, each joint owner becomes sole owner of one or more holding,

a relief along the lines of sections 247 and 248 Taxation of Chargeable Gains Act 1992 (TCGA) (relief on compulsory acquisition of land) may be claimed to alleviate the charges to capital gains tax which would otherwise arise.

If the consideration received or deemed to be received for the interest relinquished is less than or equal to the consideration given or deemed to be given for the interest acquired, relief will be allowed on the lines of that provided by section 247(2) and (5), TCGA 1992; where then consideration is greater, greater relief will be allowed on the lines of section 247(3) and (5). For this purpose the interest relinquished will be treated as the 'old land' and the interest acquired as the 'new land'. 'Land' includes any interest in or right over land and 'holding of land' includes an estate or interest in a holding of land, and is to be construed in accordance with section 243(3) TCGA 1992.

Relief will not be allowed to the extent that the 'new land' is, or becomes, a dwelling house or part of a dwelling house within the meaning of sections 222 to 226, TCGA 1992.

However where individuals who are joint beneficial owners of dwelling houses which are their respective residences become sole owners of those houses in consequence of an exchange of interests, concessionary relief may be claimed if, by virtue of sections 222 and 223, TCGA 1992, each gain accruing on a disposal of each dwelling house immediately after that exchange would be exempt. Each individual must undertake to accept for capital gains tax purposes that he or she is deemed to have acquired the other's interest in the dwelling house at the original base cost and on the original date on which that joint interest was acquired.

Where

- interests in land are exchanged after 29 October 1987; and
- this concession applies to that exchange; and
- there is a parallel exchange of interests in milk or potato quota associated with the land; and
- after the exchange each joint owner becomes sole owner of the part of the quota relating to the land he now owns;

then this concession will apply to the exchange of interests in quota as it applies to the exchange of interests in the land.

For the purposes of this concession a married couple is treated as an individual, so that an exchange of interests which results in a married couple alone becoming joint owners of land or of a dwelling house will meet the terms of the concession.

Draft Legislation

**Amendment of the Taxation of Chargeable Gains Act 1992**

- (1) In the Taxation of Chargeable Gains Act 1992 <sup>(17)</sup>, after section 248 insert—  
“Joint interests in land

**248A Roll-over relief on disposal of joint interests in land: conditions**

- (1) Section 248B applies where conditions A to E are met.
- (2) Condition A is that a person (“the landowner”) and one or more other persons jointly hold—
- (a) a holding of land, or
  - (b) two or more separate holdings of land.
- (3) Condition B is that the landowner disposes of an interest (“the relinquished interest”) in—
- (a) the holding, or
  - (b) one or more of the holdings,
- to the joint owner or to one or more of the joint owners.
- (4) Condition C is that the consideration for the disposal is or includes an interest (“the acquired interest”) in a holding of land held jointly by the landowner and one or more of the joint owners.
- (5) Condition D is that as a consequence of the disposal (taken together with any related disposals) the landowner and each of the joint owners become—
- (a) in a case falling within subsection (2)(a), the sole owner of part of the holding, or
  - (b) in a case falling within subsection (2)(b), the sole owner of one or more of the holdings.
- (6) Condition E is that the acquired interest is not an interest in excluded land (see section 248C).
- (7) For the purposes of this section—
- (a) references to a holding of land include references to an estate or interest in a holding of land, and are to be read in accordance with section 243(3);
  - (b) “joint owner” means any person who holds a holding of land jointly with the landowner;
  - (c) a related disposal (in relation to a disposal mentioned in condition B) is a disposal of an interest in the holding, or in one or more of the holdings, which is made—
    - (i) by the landowner to a joint owner, or
    - (ii) by a joint owner to the landowner or another joint owner,at the same time as the disposal mentioned in that condition;
  - (d) spouses who are living together, or civil partners who are living together, are together treated as a landowner or a joint owner.

---

<sup>(17)</sup> 1992 c. 12.

## **248B Calculation of relief**

(1) In a case where the amount or value of the consideration for the disposal of the relinquished interest is equal to or less than the market value of that interest, the landowner, on making a claim, is to be treated for the purposes of this Act—

- (a) as if the consideration for the disposal of the relinquished interest were of such amount as would secure that on the disposal neither a gain nor a loss accrues, and
- (b) as if the amount or value of the consideration for the acquisition of the acquired interest were reduced by the excess of the amount or value of the actual consideration for the disposal of the relinquished interest over the amount of the consideration which the landowner is treated as receiving under paragraph (a).

(2) In a case where the amount or value of the consideration for the disposal of the relinquished interest exceeds the market value of that interest, then if the excess (“the excess consideration”) is less than the amount of the gain (whether all chargeable gain or not) accruing on the disposal of the relinquished interest, the landowner, on making a claim, is to be treated for the purposes of this Act—

- (a) as if the amount of the gain so accruing were reduced to the amount of the excess consideration (and, if not all chargeable gain, with a proportionate reduction in the amount of the chargeable gain), and
- (b) as if the amount or value of the consideration for the acquisition of the acquired interest were reduced by the amount by which the gain is reduced (or, as the case may be, the amount by which the chargeable gain is proportionately reduced) under paragraph (a).

(3) Subsections (1) and (2) are subject to section 248C(3).

(4) Nothing in subsection (1) or (2) affects the treatment for the purposes of this Act of a joint owner (within the meaning given by section 248A(7)).

(5) Where subsection (1)(a) applies to exclude a gain which, in consequence of Schedule 2 (assets held on 6th April 1965) is not all chargeable gain, the amount of the reduction to be made under subsection (1)(b) shall be the amount of the chargeable gain, and not the whole amount of the gain.

## **248C Excluded land**

(1) Land is excluded land to the extent that—

- (a) it is a dwelling-house or part of a dwelling-house (or an interest in or right over a dwelling-house), and
- (b) by virtue of, or of any claim under, any provision of sections 222 to 226 (private residences) the whole or any part of a gain accruing on a disposal of it by the landowner at a material time would not be a chargeable gain.

(2) For the purposes of subsection (1), “a material time” means any time during the period of 6 years beginning on the date of the acquisition of the acquired interest.

(3) If land was not excluded land at the date of the acquisition of the acquired interest but becomes excluded land within 6 years of the acquisition, the amount of any chargeable gain accruing on the disposal of the relinquished interest shall be re-determined without regard to any relief previously given under section 248B by reference to the amount or value of the consideration for the acquisition of the interest in that land.

(4) Any adjustments of capital gains tax in accordance with subsection (3), whether by way of assessment or otherwise, may be made at any time, despite anything in section 34 of the Management Act (time limit for assessments).

(5) Expressions used in this section have the same meaning as in section 248A.

#### **248D Milk quotas**

(1) This section applies where—

- (a) section 248B applies to a holding (or holdings) of land, and
- (b) milk quota is associated with the holding in which the relinquished interest is held and with the holding in which the acquired interest is held.

(2) Section 248B(1), (2) and (4) apply—

- (a) to the disposal of quota associated with the holding in which the relinquished interest is held as they apply to disposal of that interest, and
- (b) to the acquisition of quota associated with the holding in which the acquired interest is held as they apply to the acquisition of that interest.

#### **248E Relief on disposal of joint interests in private residence**

(1) This section applies where conditions A to E are met.

(2) Condition A is that a person (“the landowner”) and one or more other persons jointly hold an interest in two or more dwelling-houses.

(3) Condition B is that the landowner disposes of an interest (“the relinquished interest”) in one or more of the dwelling-houses to the joint owner or to one or more of the joint owners.

(4) Condition C is that the consideration for the disposal is or includes an interest (“the acquired interest”) in one of the other dwelling-houses.

(5) Condition D is that as a consequence of the disposal (taken together with any related disposals)—

- (a) the dwelling-house in which the landowner acquires an interest becomes the only or main residence of the landowner, and
- (b) each of the other dwelling-houses becomes the only or main residence of one (and only one) of the joint owners.

(6) Condition E is that if each dwelling-house were disposed of immediately after the disposal (or disposals) mentioned in subsection (5) then by virtue of sections 222 and 223 (private residences) no part of the gain accruing on each of those disposals would be a chargeable gain.

(7) The landowner, on making a claim jointly with the joint owner or joint owners, shall be treated for the purposes of this Act—

- (a) as if the consideration for the disposal of the relinquished interest were of such amount as would secure that on the disposal neither a gain nor a loss accrues, and
- (b) as if the acquired interest were acquired by the landowner—
  - (i) at the time it was acquired jointly by the landowner and the joint owner or owners, and
  - (ii) for a consideration equal to the amount of the sums that would have been allowable under section 38(1)(a) and (b) (acquisition and disposal

costs etc) as a deduction in the computation of any gain on a disposal of the acquired interest by the joint owner or owners.

- (8) For the purposes of this section—
- (a) “joint owner” means any person who holds an interest in a dwelling-house jointly with the landowner;
  - (b) a related disposal (in relation to a disposal mentioned in condition B) is a disposal of an interest in a dwelling-house which is made—
    - (i) by the landowner to a joint owner, or
    - (ii) by a joint owner to the landowner or another joint owner, at the same time as the disposal mentioned in that condition;
  - (c) spouses who are living together, or civil partners who are living together, are together treated as a landowner or a joint owner.”.

(2) The amendments made by this article have effect in relation to disposals on or after the date this Order comes into force.

### Explanation

This concession operates where two or more people jointly own land and want to separate their interests so that each has sole title to one or more pieces of land. If they do this by swapping their interests in different parts of the land, or in different pieces of land, taxable gains could arise because the swap involves their disposing of rights over land. This could be a hindrance for rationalising joint holdings of land, which may, for example, occur if several people inherit a piece of land jointly.

The concession prevents gains from arising at the time of the swap, or reduces the amounts of gains that do arise. The gains that are deferred will come into charge when an owner disposes of the land of which, as a result of the swap, that individual is sole owner. This is done by reducing the amount of the cost that is deducted in arriving at the gain on the later disposal by the amount of the deferred gain.

The concession does not apply where an interest in property that is not occupied as the owner’s home is exchanged for an interest in property where the owner lives. This is because in that case any gain on the disposal of the owner-occupied land would not be taxable, or would be only taxable in part, because of the relief from tax for the gain on a person’s principal private residence. So in an exchange of non-owner occupied land for owner-occupied land, any deferred gain would not be taxed when the owner-occupied land was sold.

If within six years of an exchange an owner begins to live in the property of which they sole owner as a result of the exchange, the deferred gain becomes taxable at the time of the exchange.

The concession can apply to exchanges where the swap is of interests in houses and at the time of the swap each person involved lives in the house that they own at the end of the swap.

When considering whether a single person has sole ownership of a piece of land after a swap, a married couple, or a pair of civil partners, who are living together are treated as a single person.

Where there is a swap of interests in land, and milk quota is attributable to all the pieces of land involved in the swap, concession applies to the swap of milk quota in the same way that it applies to the swap of interests in the land.

## **D44: Rebasing and indexation: shares derived from larger holdings held at 31 March 1982**

### **ESC Text**

For rebasing and indexation purposes, taxpayers are treated as having held an asset at 31 March 1982 if it was acquired after that date by a transfer, or series of transfers, treated as giving rise to neither a gain nor a loss for capital gains purposes, from someone who did hold it at that date. Such 'no gain/no loss' transfers include transfers between spouses and between companies in the same group where transfers fell within section 58 or section 171(1) of TCGA 1992 or the predecessors of those sections.

Where, for rebasing and indexation purposes, it is necessary to establish the 31 March 1982 market value of shares or securities of the same class, shares or securities acquired in this way by no gain/no loss transfer are added to any such shares or securities of the same class actually held by the transferee at 31 March 1982 and valued as a single holding.

For the purposes of this valuation, where a claim is made by the taxpayer, the value of the single holding may be regarded as:

- in the case of a disposal by an individual, the appropriate proportion of the value of any larger holding of shares or securities of the same class which were held by the individual's spouse at 31 March 1982 and from which part or all of the single holding was derived by one or more no gain/no loss transfers within section 58 TCGA 1992;
- in the case of a disposal by a company, the appropriate proportion of the value of any larger holding of shares or securities of the same class which were held by another company at 31 March 1982 and from which part or all of the single holding was derived by one or more no gain/no loss transfers within section 171(1) TCGA 1992.

This extra-statutory concession applies in relation to:

- all relevant disposals made before 16 March 1993 in relation to which a claim is made before liabilities are finally determined; and
- all disposals made on or after 16 March 1993 provided a claim is made within 2 years of the end of the year of assessment or accounting period in which the disposal is made; or at such later time as the Board of Inland Revenue may allow.

### **Draft Legislation**

#### **Amendments of the Taxation of Chargeable Gains Act 1992**

- (1) The Taxation of Chargeable Gains Act 1992 is amended as follows.
- (2) In section 55(6) (disposal of assets acquired by no gain/no loss disposals since 31 March 1982), omit "and" at the end of paragraph (a) and after that paragraph insert—
  - “(aa) in the case of a disposal to which paragraph 1A(1) or (3) of Schedule 3 applies (certain holdings of shares or securities), the market value of the asset on that date is to be determined in accordance with that paragraph; and”.
- (3) In Schedule 3 (assets held on 31 March 1982), after paragraph 1 insert—
  - “1A.—(1) This paragraph applies where—
    - (a) paragraph 1(1) applies to a disposal of shares in or securities of a company that are of a class,

- (b) accordingly, the shares or securities constitute or form part of a holding which the person making the disposal ("P") is treated as having held on 31 March 1982 ("the deemed 1982 holding"),
- (c) the disposal by which P acquired the shares or securities, and any previous disposal of them after 31 March 1982, was a disposal to which section 171(1) (transfers within a group) applied,
- (d) some or all of the shares or securities constituting the deemed 1982 holding were in fact held on 31 March 1982 by a person other than P, and
- (e) in the hands of that person on that date they formed part of a holding which—
  - (i) consisted of shares or securities of the same class as the shares or securities disposed of, and
  - (ii) was larger than the deemed 1982 holding.

(2) If P makes a claim, then for the purposes of section 35(2) the market value on 31 March 1982 of the shares or securities disposed of is to be treated as being—

$$VLH \times \frac{NDO}{NLH}$$

where—

VLH is the market value on 31 March 1982 of the larger holding mentioned in sub-paragraph (1)(e) (in the hands of the person who in fact held it on that date),

NDO is the number of shares or securities disposed of, and

NLH is the number of shares or securities comprised in the larger holding on that date.

(3) Sub-paragraph (4) applies where sub-paragraph (1)(d) and (e) are met by two or more persons holding the shares or securities as two or more holdings or parts of holdings ("the original holdings").

(4) Sub-paragraph (2) applies for the purpose of calculating the market value on 31 March 1982 of the shares or securities disposed of, except that—

- (a) VLH is the market value on 31 March 1982 of the largest of the original holdings, and
- (b) NLH is the number of shares or securities comprised in that holding.

(5) A claim under sub-paragraph (2) must be made on or before the second anniversary of the end of the accounting period of P in which the disposal takes place.

(6) Shares in or securities of a company shall not be treated as being of the same class unless they are so treated by the practice of a recognised stock exchange or would be so treated if dealt with on a recognised stock exchange."

(4) This article has effect in relation to disposals made on or after (commencement date for Order).

### Explanation

This concession relates to ascertaining the value of unquoted shares and securities at 31 March 1982.

When computing the capital gain arising to a company on the disposal of an asset held at 31 March 1982, the company making the disposal is treated as having acquired the asset at 31 March 1982 for a payment equal to the asset's value at that time. This treatment may be adjusted in certain cases if the historic cost of the asset is higher than the value at 31 March 1982, but even in those cases the value at 31 March 1982 is required to make the comparison.

The value at 31 March 1982 is also required to compute indexation allowance due on the disposal of an asset that was held at that date. Indexation allowance reduces the gain on disposal of an asset by increasing the expenditure to be deducted in arriving at the gain by reference to the increase in the retail price index between the later of the date of the expenditure or 31 March 1982 and the time of the disposal.

For companies, indexation allowance is calculated up to the date of the disposal. For persons other than companies, indexation allowance was frozen in 1998, so that no indexation allowance was available for movements in the Retail Prices Index (RPI) after that date. And for disposals on or after 6 April 2008 this frozen indexation is no longer allowable.

There are rules that treat disposals between certain persons as being at no gain/no loss. The recipient of such a transfer effectively inherits the transferor's allowable cost. The 2 most common "no gain/no loss provisions" are section 58 TCGA (which applies to transactions between spouses or civil partners, and section 171 TCGA (which applies to transfers between members of the same group of companies).

Where a company has acquired an asset from another group member, and all transfers of the asset since 31 March 1982 have been no gain/no loss transactions, the rules for calculating the gain when the company disposes of the asset (other than by a no gain/no loss transfer) is calculated as though the company held the asset at 31 March 1982, rather than acquiring it at a later date. Indexation allowance is similarly calculated as though the company had held the asset at 31 March 1982.

For most assets, it makes no difference to the valuation which person held the asset at 31 March 1982. However, there is an exception in the case of unquoted shares and securities.

The number of unquoted shares that a person owns may make a significant difference to the value per share in that holding. For example, a holding of 60 per cent of the shares in an unquoted company will be significantly more than twice the value of 30 per cent of those shares, because the 60 per cent holding gives control of the company.

Suppose that Company A acquired 25 per cent of the shares of an unquoted company (Company X) from Company B, a member of the same group as Company A. At 31 March 1982 Company B had owned 55 per cent of the shares in Company X. Company A later sold its 25 per cent holding in Company X to a person who was not a member of Company A's group.

In computing the gain on Company A's disposal, Company A is treated as having held the shares in Company X at 31 March 1982. The value of a 25 per cent holding at 31 March 1982 would be significantly less than the value of 25/55 of a 55 per cent holding at that date. So because of the transfer of shares from Company B to Company A, the March 1982 value which A is deemed to have paid for the shares, and the indexation allowance on that expenditure, will be lower than would have been the case if Company B had held the shares from 31 March 1982 until sale. This means that the chargeable gain arising to Company A will be greater than the gain that would have arisen to Company B if the shares had not been transferred to Company A. The concession addresses this situation.

The concession applies where—

- a company has disposed of unquoted shares and securities;
- in computing the gain arising on that disposal, it is necessary to ascertain the 31 March 1982 value of the shares or securities; and
- the company acquired the shares or securities from another member of the same group so that the no gain/no loss rule for intra-group transfers applied.

The effect of the concession is that, in determining the 31 March 1982 value of those shares and securities held or treated as held at that date, they are valued as part of the largest holding of shares or securities from which any of them were derived. So, in the example above, the value at 31 March 1982 of the 25 per cent holding disposed of by Company A shall be ascertained as 25/55 of the value of Company B's 55 per cent holding at 31 March 1982.

The concession applies a similar rule to cases where the no gain/no loss transfer was between spouses or civil partners. However, one result of the 2008 reform of CGT is that, for disposals after 5 April 2008, the fiction that assets acquired at no gain/no loss were held at 31 March 1982 no longer applies. So the concession can no longer apply for CGT purposes, and the legislation to give it effect applies only for corporation tax purposes.

## **D50: Treatment of compensation**

### **ESC Text**

This concession applies to certain capital sums received as compensation for the loss or deprivation of property which at the time of its confiscation, expropriation or destruction was situated outside the United Kingdom.

A capital sum to which this concession applies shall not include any compensation payment made in respect of any property in consequence of statutory, contractual or other legal rights in force at the time that property was confiscated, expropriated or destroyed.

Capital sums to which this concession applies are limited to payments made in recognition of, and in recompense for, the past loss or deprivation of the property in circumstances where no form of legal redress was then available to the owner. Loss or deprivation of property includes the disposal of property at less than market value by reason of a sale under duress. Capital sums to which this concession applies are those paid as compensation –

- by virtue of statutory orders under the Foreign Compensation Act 1950 or under directly analogous arrangements set up by foreign governments
- in consequence of any recommendation of the Spoliation Advisory Panel or of any equivalent body set up outside the United Kingdom
- in settlement of legal claims, or by the order of any recognised court or legal tribunal with jurisdiction to cover such claims, to the effect that the original seizure of the property was wrongful and should be declared illegal.

A capital sum to which this concession applies shall not be treated as giving rise to a chargeable gain on the person entitled to receive it provided such person –

- was the owner of the property to which the compensation relates at the time it was confiscated, expropriated or destroyed, or
- acquired their title, directly or indirectly, from the owner of the property at the time it was confiscated, expropriated or destroyed.

This concession will not apply to exempt a capital sum paid as compensation in the circumstances described above where the person entitled to receive it has acquired, or derived their title from another person who has acquired, the right to receive that compensation for consideration in money or money's worth.

In deciding whether this concession can apply to any person, transfers of assets or rights between husband and wife and within companies in the same group which have been treated as giving rise to neither a gain nor a loss under sections 58 and 171 of TCGA 1992 respectively, will be ignored.

The value of the compensation received will be taken to be the amount paid in money or money's worth, in respect of the compensation claim under the arrangements for claims settlement. This value shall, where the compensation is in the form of an asset, be taken as the value at which the asset was acquired by the person entitled to the compensation for the purposes of computing any gain or loss on a subsequent disposal of the asset by that person.

## Offset for losses claimed

If a capital gains allowable loss is or has been established as a consequence of:

- the property having been confiscated, expropriated or destroyed, or
- as a result of the abandonment or extinction of the rights in respect of which a claim for the compensation was established,

this concession is not to apply to so much of the chargeable gain which would arise on the receipt of the compensation if this concession did not apply, as is equal to the allowable loss claimed.

## Date of application

The concession in this form applies to compensation received on or after 20 December 2000 and to any case where compensation was received before that date but where the liability thereon was not finally determined before that date.

## Draft Legislation

### Compensation for deprivation of foreign assets

1.—(1) In the Taxation of Chargeable Gains Act 1992<sup>(18)</sup>, after section 268A insert—

#### “268B Compensation for deprivation of foreign assets

- (1) A gain is not a chargeable gain if—
- (a) it accrues to a person on receipt of a capital sum paid by way of compensation for the deprivation of a foreign asset,
  - (b) no legal redress was available when the deprivation occurred, and
  - (c) the sum is paid as the result of a relevant compensation award.
- (2) A relevant compensation award is an award or distribution made—
- (a) under—
    - (i) an Order in Council made under the Foreign Compensation Act 1950<sup>(19)</sup>, or
    - (ii) arrangements established by the government of a territory outside the United Kingdom that are equivalent in effect to such an Order,
  - (b) as a result of a recommendation of—
    - (i) the Spoliation Advisory Panel, or
    - (ii) a body outside the United Kingdom whose purposes and functions are equivalent to those of the Panel, or
  - (c) in settlement of a legal claim to the effect that the deprivation was unlawful or in accordance with an order to that effect made by a court, tribunal or other competent authority with jurisdiction to decide such a claim.

---

<sup>(18)</sup> 1992 c. 12; section 268A was inserted by section 64(4) of the Finance Act 2006 (c. 25).

<sup>(19)</sup> 1950 c. 12 (14 Geo 6); amended by Part 2 of the Schedule to the Statute Law (Repeals) Act 1974 (c. 22), paragraph 12(2) of Schedule 2 to the Statute Law (Repeals) Act 1989 (c. 43), paragraph 25 of Schedule 6 to the Judicial Pensions and Retirement Act 1993 (c. 8) and the Foreign Compensation (Amendment) Act 1993 (c. 16).

- (3) Reference in this section to the payment of a capital sum by way of compensation for the deprivation of a foreign asset includes—
- (a) payment as a result of the abandonment or extinguishment of rights in respect of the deprivation;
  - (b) return of the asset itself.
- (4) In the case of a gain accruing to a person other than the original owner—
- (a) subsection (1) does not apply if consideration had been given at any time (whether by that person or someone else) for the right to receive the compensation, but
  - (b) consideration given on an acquisition falling within section 58(1) or 171(1)<sup>(20)</sup> is to be ignored for these purposes.
- (5) If the capital sum is paid (or the foreign asset returned) to a person to whom an allowable loss has accrued as a result of—
- (a) the deprivation of the foreign asset, or
  - (b) the abandonment or extinguishment of rights in respect of the deprivation,
- subsection (1) applies only to so much of any gain as exceeds that loss.
- (6) For a person to obtain relief under this section, the person must make a claim.
- (7) If the capital sum is paid by means of the transfer of an asset (or the foreign asset is returned), that asset is to be treated for the purposes of computing a gain or a loss on its subsequent disposal as if it were acquired for a consideration equal to its market value at the time of the transfer.
- (8) In this section—
- “capital sum” means money or money’s worth;
  - “deprivation”, in relation to a foreign asset, includes deprivation resulting from—
    - (a) the seizure, confiscation, forfeiture, destruction or expropriation of the asset;
    - (b) the disposal of the asset by a sale under duress for less than market value;
  - “foreign asset” means an asset which was situated outside the United Kingdom at the time of the deprivation;
  - “legal redress”, in relation to the deprivation of a foreign asset, means a right to recover the asset or to receive compensation for the deprivation;
  - “original owner” means the person who owned the foreign asset at the time of the deprivation;
  - “Spoliation Advisory Panel” includes any successor to that Panel.
- (9) This section does not apply in relation to a gain to which section 268A applies.”
- (2) Paragraph (1) has effect in relation to capital sums received on or after the date on which this Order comes into force.

### Explanation

The concession prevents liability to tax on chargeable gains that arise when someone receives compensation for the loss of a foreign asset as a result of the actions of a foreign government. A common example of such a loss was the confiscation of valuable property during the Second World War. The concession applies where:

---

<sup>(20)</sup> Section 171(1) was substituted by paragraph 2(2) of Schedule 29 to the Finance Act 2000 (c. 17).

- an asset located outside the UK was confiscated or destroyed, or its owner was forced to sell it for a sum less than its market value;
- the owner who was deprived of the asset had no legal recourse at the time;
- at a later date compensation for the deprivation becomes possible under any of the circumstances outlined in the concession; and
- as a result compensation is paid to the owner or to the owner's successors in title.

The receipt of the compensation could result in a taxable capital gain and this concession prevents this. The concession also has the effect that where the compensation takes the form of property rather than money, any gain on a future disposal of that property will reflect only the increase in value of the property from the time it was received as compensation. That is the case even if the property received as compensation is in fact the original property that was lost.

The concession does not apply to anyone who bought their right to the compensation. For those cases, if the value of the compensation received exceeds the value given to acquire the right, the difference will be taxable as a capital gain.

## **Estimated Gift Aid donations by companies**

### **ESC Text**

Sometimes, charity owned companies will estimate their expected corporation tax profits and make a qualifying donation based on that estimate. HMRC Charities will expect to see an amount deducted in the charity-owned company's accounts and a matching entry in the charity's accounts.

Where a charity-owned company makes an estimated donation to its parent charity, to extinguish any corporation tax liability and this proves to be excessive and so is partly repaid by the charity, HMRC Charities will expect to see some evidence (e.g. correspondence; Board minutes; or profit shedding deed) that the intention was to pay over only the taxable profits and that any money paid over was clearly provisional or loaned until the profits were finalised. If there is a need for a charity to repay part of such a donation, HMRC Charities would look for evidence about the purpose of the payment by the charity to the company. If there is otherwise no legal basis for a charity repaying an 'excess' of a donation, then the excess repaid will be non-charitable expenditure and will have tax consequences for the charity.

### **Draft Legislation**

#### **Amendments to the Income and Corporation Taxes Act 1988**

1. After section 339(3B) of the Income and Corporation Taxes Act 1988<sup>(21)</sup> insert—
  - “(3BA) In a case where a company makes a payment to a charity (“the donation”), and the charity makes a payment to the company (“the repayment”), then for the purposes of subsection (3B)(a) the donation is not made subject to a condition as to repayment if—
    - (a) the company is wholly owned by the charity, or by a number of charities that include the charity;
    - (b) the donation is of an amount which the company estimates to be the amount necessary to reduce to nil the company’s total profits for the accounting period in which the donation is made (“the relevant period”);
    - (c) the only purpose for which the charity makes the repayment is to adjust the amount of the donation so that is of the amount actually necessary to reduce to nil the company’s total profits for the relevant period; and
    - (d) the repayment is made no later than 12 months after the end of the relevant period.
  - (3BB) If subsection (3BA) applies—
    - (a) the repayment is not non-charitable expenditure for the purposes of section 505(4)<sup>(22)</sup>, or section 543(1)(f) of ITA 2007; and

---

<sup>(21)</sup> 1988 c. 1; section 339(3B) was inserted by section 26 of the Finance Act 1990 (c. 29) and amended by section 40 of the Finance Act 2000 (c. 17), section 58 of the Finance Act 2006 (c. 25) and section 60 of the Finance Act 2007 (c. 11).

<sup>(22)</sup> Section 505(4) was amended by section 55 of the Finance Act 2006 and section 1027 of the Income Tax Act 2007 (c. 3).

(b) paragraphs 56 and 62 (but not 64) of Schedule 18 to the Finance Act 1998<sup>(23)</sup> (supplementary claims or elections) apply to the repayment

### Explanation

The current legislation allows qualifying company Gift Aid donations to charity as an allowable deduction from the paying company's total profits in computing its corporation tax liability. Legislation defines a qualifying donation, and a payment made by a company is not a qualifying donation if it is made subject to a condition as to repayment. In addition, any repayment from the charity to the donor company would ordinarily be non-charitable expenditure, and have tax consequences for the charity.

Companies that are wholly owned by a charity (or one or more charities) typically pay up all of their corporation tax profits as 'company gift aid' donations to their parent charity or charities, and claim a deduction thereby ensuring that the subsidiary has no corporation tax liability.

A deduction is allowed only in respect of payments made by the company in the accounting period concerned - subject to express exceptions. To satisfy this condition companies that are wholly owned by a charity make estimated payments to that charity during the accounting period before the final corporation tax liability for that accounting period has been calculated. As it is made before the accounts are finalised, this donation is a best estimate of the taxable profits for the accounting period that would be liable to corporation tax and is made with the intention of reducing the company's tax liability to zero. These estimated donations carry an option for partial repayment (to the extent that the full amount is not needed to 'cover' the company's profits). As a result of this inherent "condition as to repayment", the donations would not legally qualify as company Gift Aid donations within the rules described above. Any repayment by the charity to the donor company would therefore be non-charitable expenditure and a tax charge may arise. The concession however permits that where such estimated donations are made, any repayment by the charity is not to be treated as non-charitable expenditure.

---

<sup>(23)</sup> 1998 c. 36.

## **ESCs to be legislated using other powers (not section 160 of the Finance Act 2008)**

### **A61: Clergymen's heating and lighting etc expenses; National Insurance element**

#### **ESC Text and Explanation**

See section at page 8 relating to A61.

#### **Draft Legislation**

### **Amendment of the Social Security (Contributions) Regulations 2001**

(1) For paragraph 8 in Part 10 of Schedule 3 to the Social Security (Contributions) Regulations 2001<sup>(24)</sup> (payments to be disregarded in the calculation of earnings for the purposes of earnings-related contributions) substitute—

#### **“Expenses and other payments not charged to income tax under miscellaneous exemptions**

**8.** A payment which is not charged to tax under any of the following provisions of ITEPA 2003—

- (a) section 245 (travel and subsistence during public transport strikes);
- (b) section 246 (transport between work and home for disabled employees: general);
- (c) section 248 (transport home: late night working and failure of car-sharing arrangements);
- (d) section 290A<sup>(25)</sup> (accommodation outgoings of ministers of religion);
- (e) section 290B (allowances paid to ministers of religion in respect of accommodation outgoings);
- (f) section 321 (suggestion awards).”.

---

<sup>(24)</sup> S.I. 2001/1004; the only relevant amending instrument is S.I. 2004/770, which substituted paragraph 8 in Part 10 of Schedule 3.

<sup>(25)</sup> Sections 290A and 290B were inserted by S.I.2009/0000.

## **Zero rating of nurses' prescriptions by pharmacists and GP dispensing**

### ESC Text

#### Nurses prescriptions

Where dispensing or repeat dispensing is undertaken by a registered pharmacist, against a prescription issued by a doctor or dentist, that is a supply of goods, zero-rated under Item 1 of Group 12, Schedule 8 of the VAT Act 1994. We also allow items dispensed by a pharmacist against a nurse's prescription to be zero-rated. In all cases, the items dispensed must be for the personal use of the patient; this excludes use while the patient is being treated in a hospital or similar institution.

Note – this informal concession is set out as above in paragraph 9.4.1 of VAT Notice 701/57, 'Health Professionals', from which the text above is taken.

### ESC Text

#### GP dispensing

Under VAT Act 1994, Schedule 8, Group 12, Item 1A, zero-rating applies to 'qualifying goods' (essentially drugs and medicines) dispensed by a doctor under certain National Health Service (NHS) regulations. In practice, these regulations cover General Practitioners (GPs) – frequently in rural areas – who are authorised to dispense goods to patients who would have difficulty reaching a pharmacy by reason of distance or disability. The effect of the concession is therefore to ensure that goods dispensed in such circumstances enjoy the same zero-rating as those dispensed by a pharmacist.

### Draft Legislation

The following applies both to the concession "zero rating of nurses' prescriptions by pharmacists" and the concession "GP dispensing".

"The Treasury, in exercise of the powers conferred by sections 30(4) and 96(9) of the Value Added Tax Act 1994<sup>(26)</sup>, make the following Order:

- (1) This Order may be cited as the Value Added Tax (Drugs and Medicines) Order 2009, and comes into force on x y 2009 and has effect in relation to supplies made on or after that date.
- (2) Group 12<sup>(27)</sup> of Schedule 8 to the Value Added Tax Act 1994 (zero-rating: drugs, medicines, aids for the handicapped, etc.) is varied as follows.
- (3) For items 1 and 1A substitute—
  - "1. The supply of any qualifying goods dispensed to an individual for that individual's personal use on the prescription of an appropriate practitioner where the dispensing is—

---

<sup>(26)</sup> 1994 c.23; section 96(9) was extended by section 99(6) of, and paragraph 5 of Schedule 31 to, the Finance Act 2001 (c.9).

<sup>(27)</sup> Group 12 was varied by S.I. 1995/652, 1997/2744, 2007/289; there are other amending instruments but none is relevant.

- (a) by a registered pharmacist, or
  - (b) in accordance with a requirement or authorisation under a relevant provision.”
- (4) In Note (1) omit “or item 1A”.
- (5) In Note (2A) for “items 1 and 1A” substitute “item 1”.
- (6) Insert after Note (2A)—
- “(2B) In item 1 “appropriate practitioner” means—
- (a) a registered medical practitioner<sup>(28)</sup>;
  - (b) a person registered in the dentists’ register under the Dentists Act 1984<sup>(29)</sup>;
  - (c) a community practitioner nurse prescriber;
  - (d) a nurse independent prescriber;
  - (e) an optometrist independent prescriber;
  - (f) a pharmacist independent prescriber;
  - (g) a supplementary prescriber.
- For the purposes of this Note “community practitioner nurse prescriber”, “nurse independent prescriber”, “optometrist independent prescriber”, “pharmacist independent prescriber” and “supplementary prescriber” have the meanings given in article 1(2) of the Prescription Only Medicines (Human Use) Order 1997<sup>(30)</sup>.
- (2C) In item 1 “registered pharmacist” means a person who is—
- (a) registered in the Register of Pharmacists maintained under the Pharmacists and Pharmacy Technicians Order 2007<sup>(31)</sup>, or
  - (b) registered in the register of pharmaceutical chemists kept under the Pharmacy (Northern Ireland) Order 1976<sup>(32)</sup>.
- (2D) In item 1 “relevant provision” means—
- (a) article 57 of the Health and Personal Social Services (Northern Ireland) Order 1972<sup>(33)</sup>;
  - (b) regulation 20 of the National Health Service (Pharmaceutical Services) Regulations 1992<sup>(34)</sup>;
  - (c) regulation 12 of the Pharmaceutical Services Regulations (Northern Ireland) 1997<sup>(35)</sup>;

---

<sup>(28)</sup> “registered medical practitioner” is defined in Schedule 1 to the Interpretation Act 1978 (c.30) as amended by S.I. 2002/3135.

<sup>(29)</sup> 1984 c.24.

<sup>(30)</sup> S.I. 1997/1830 as amended by S.I. 2002/549, 2003/696, 2003/1590, 2004/1771, 2005/765, 2005/1507, 2006/915, 2007/289 2007/3101, 2008/1161; there are other amending instruments but none is relevant.

<sup>(31)</sup> S.I. 2007/289 as amended by S.I. 2007/3101; there is another amending instrument but it is not relevant.

<sup>(32)</sup> S.I. 1976/1213 (N.I.22) as amended by S.I. 2008/192; there are other amending instruments but none is relevant.

<sup>(33)</sup> S.I. 1972/1265 (N.I.14) as amended by S.I. 2004/311 (N.I.2).

<sup>(34)</sup> S.I. 1992/662 as amended by S.I. 2004/1021.

<sup>(35)</sup> S.R. 1997 No. 381 as amended by S.R. 2001 No. 222, 2005 No. 231; there are other amending instruments but none is relevant.

- (d) paragraph 44 of Schedule 5 to the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004<sup>(36)</sup>;
- (e) paragraph 15 of Schedule 1 to the National Health Service (Primary Medical Services section 17C Agreements) (Scotland) Regulations 2004<sup>(37)</sup>;
- (f) paragraphs 47 and 49 of Schedule 6 to the National Health Service (General Medical Services Contracts) Regulations 2004<sup>(38)</sup>;
- (g) paragraph 44 of Schedule 5 to the Health and Personal Social Services (General Medical Services Contracts) Regulations (Northern Ireland) 2004<sup>(39)</sup>;
- (h) paragraphs 46, 48 and 49 of Schedule 5 to the National Health Service (Personal Medical Services Agreements) Regulations 2004<sup>(40)</sup>;
- (i) paragraph 47 of Schedule 6 to the National Health Service (General Medical Services Contracts) (Wales) Regulations 2004<sup>(41)</sup>;
- (j) regulation 60 of the National Health Service (Pharmaceutical Services) Regulations 2005<sup>(42)</sup>.”.

(7) In Note (5) omit “1A.”.

### Explanation

#### Nurses Prescriptions

The zero-rating of VAT applies to the supply of ‘qualifying goods’ (essentially drugs and medicines) dispensed by a pharmacist or authorised doctor against a prescription issued by a doctor or dentist. The VAT Act 1994 was legislated at a time when only doctors or dentists could prescribe such goods. Since then, prescribing rights for certain categories of goods have been extended to nurses. Therefore this concessionary treatment was introduced to preserve zero-rating where it would otherwise have been lost. Since the concession was introduced, prescribing rights have been further extended to include more groups of health professionals in addition to doctors and dentists. The legislation will ensure that zero-rating applies to prescriptions issued by all of these professionals. However, the overall scope of the zero-rated supplies remains unchanged. HMRC will also take the opportunity to amend this part of the law to reflect other changes to NHS regulations regarding the dispensing of prescribed drugs and medicines.

---

<sup>(36)</sup> S.S.I. 2004/115 as amended by S.S.I. 2007/206, 2007/392, 2007/501, 2008/27; there are other amending instruments but none is relevant.

<sup>(37)</sup> S.S.I. 2004/116 as amended by S.S.I. 2007/205, 2007/393, 2007/502, 2008/27; there are other amending instruments but none is relevant.

<sup>(38)</sup> S.I. 2004/291 as amended by S.I. 2005/3315; there are other amending instruments but none is relevant.

<sup>(39)</sup> S.R. 2004 No. 140.

<sup>(40)</sup> S.I. 2004/627 as amended by S.I. 2005/3315; there are other amending instruments but none is relevant.

<sup>(41)</sup> S.I. 2004/478 (W. 48).

<sup>(42)</sup> S.I. 2005/641 as amended by S.I. 2005/1015, 2006/3373.

Explanation

GP Dispensing

The NHS statutory provisions concerned have been amended and/or repealed and replaced over the years, such that Item 1A of Group 12 no longer reflects the provisions in force. The legislation will omit Item 1A and include GP dispensing in a revised Item 1.

# **A** The Government's Consultation Code of Practice

## ABOUT THE CONSULTATION PROCESS

This consultation is being conducted in accordance with the Government's Consultation Code of Practice. If you wish to access the full version of the Code, you can obtain it online at:

*[www.bis.gov.uk](http://www.bis.gov.uk)*

## THE CONSULTATION CRITERIA

1. When to consult - Formal consultation should take place at a stage when there is scope to influence the policy outcome.
2. Duration of consultation exercises - Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. Clarity of scope and impact - Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. Accessibility of consultation exercise - Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. The burden of consultation - Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. Responsiveness of consultation exercises - Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. Capacity to consult - Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

If you feel that this consultation does not satisfy these criteria, or if you have any complaints about the process, please contact:

Richard Bowyer, Better Regulation Unit  
020 7147 0062 or [richard.bowyer@hmrc.gsi.gov.uk](mailto:richard.bowyer@hmrc.gsi.gov.uk)