

**2011 No. 1037**

**CORPORATION TAX**

**INCOME TAX**

**CAPITAL GAINS TAX**

**The Enactment of Extra-Statutory Concessions Order 2011**

*Made* - - - - *30th March 2011*  
*Coming into force* - - *1st April 2011*

The Treasury make the following Order in exercise of the power conferred by section 160 of the Finance Act 2008(a).

In accordance with section 160(7) of that Act, a draft of this instrument was laid before the House of Commons and approved by a resolution of that House.

**Citation and commencement**

1. This Order may be cited as the Enactment of Extra-Statutory Concessions Order 2011 and comes into force on 1st April 2011.

**Recovery of overpaid tax: special relief**

2.—(1) Schedule 1AB to the Taxes Management Act 1970(b) (recovery of overpaid tax etc) is amended as follows.

(2) In paragraph 2(1), for “paragraph 4(5)” substitute “paragraphs 3A and 4(5)”.

(3) In paragraph 3, at the end insert—

“(5) Sub-paragraph (1) is subject to paragraph 3A.”.

(4) After paragraph 3 insert—

*“Determinations under section 28C: special rules*

**3A.**—(1) This paragraph applies where—

(a) a determination has been made under section 28C of an amount that a person is liable to pay by way of income tax or capital gains tax, but the person believes the tax is not due or, if it has been paid, was not due,

(b) relief would be available under this Schedule but for the fact that—

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(a) 2008 c. 9.

(b) 1970 c. 9. Schedule 1AB was inserted by section 100 of, and paragraph 2 of Schedule 52 to, the Finance Act 2009 (c. 10) with effect in relation to claims made on or after 1st April 2010.

- (i) the claim falls within Case C (see paragraph 2(4)),
  - (ii) the claim falls within Case F(a) (see paragraph 2(7)(a)), or
  - (iii) more than 4 years have elapsed since the end of the relevant tax year (see paragraph 3(1)), and
- (c) if the claim falls within Case F(a), the person was neither present nor legally represented during the enforcement proceedings in question.
- (2) A claim under this Schedule for repayment or discharge of the amount may be made, and effect given to it, despite paragraph 2(4), paragraph 2(7)(a) or paragraph 3(1), as the case may be.
- (3) But the Commissioners are not liable to give effect to a claim made in reliance on this paragraph unless conditions A, B and C are met.
- (4) Condition A is that in the opinion of the Commissioners it would be unconscionable for the Commissioners to seek to recover the amount (or to withhold repayment of it, if it has already been paid).
- (5) Condition B is that the person's affairs (as respects matters concerning the Commissioners) are otherwise up to date or arrangements have been put in place, to the satisfaction of the Commissioners, to bring them up to date so far as possible.
- (6) Condition C is that either—
- (a) the person has not relied on this paragraph on a previous occasion (whether in respect of the same or a different determination or tax), or
  - (b) the person has done so, but in the exceptional circumstances of the case should be allowed to do so again on the present occasion.
- (7) For the purposes of sub-paragraph (6)—
- (a) a person has relied on this paragraph on a previous occasion if the person has made a claim (or a composite set of claims involving one or more determinations, taxes and tax years) in reliance on this paragraph on a previous occasion, and
  - (b) it does not matter whether that claim (or set of claims) succeeded.
- (8) A claim made in reliance on this paragraph must include (in addition to anything required by Schedule 1A) such information and documentation as is reasonably required for the purpose of determining whether conditions A, B and C are met.”.

**3.—**(1) Part 6 of Schedule 18 to the Finance Act 1998(a) (excessive assessments or repayments etc) is amended as follows.

(2) In paragraph 51A(1), for “paragraph 51C(5)” substitute “paragraphs 51BA and 51C(5)”.

(3) In paragraph 51B, at the end insert—

“(5) Sub-paragraph (1) is subject to paragraph 51BA.”.

(4) After paragraph 51B insert—

*“Determinations under paragraphs 36 and 37: special rules*

**51BA.—**(1) This paragraph applies where—

- (a) a determination has been made under paragraph 36 or 37 of an amount that a person is liable to pay by way of tax, but the person believes the tax is not due or, if it has been paid, was not due,
- (b) relief would be available under paragraph 51 but for the fact that—
  - (i) the claim falls within Case C (see paragraph 51A(4)),
  - (ii) the claim falls within Case F(a) (see paragraph 51A(7)(a)), or

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(a) 1998 c. 36. Paragraphs 51A to 51G were inserted by section 100 of, and paragraphs 12 to 14 of Schedule 52 to, the Finance Act 2009 with effect in relation to claims made on or after 1st April 2010.

(iii) more than 4 years have elapsed since the end of the relevant accounting period (see paragraph 51B(1)), and

(c) if the claim falls within Case F(a), the person was neither present nor legally represented during the enforcement proceedings in question.

(2) A claim under paragraph 51 for repayment or discharge of the amount may be made, and effect given to it, despite paragraph 51A(4), paragraph 51A(7)(a) or paragraph 51B(1), as the case may be.

(3) But the Commissioners for Her Majesty's Revenue and Customs are not liable to give effect to a claim made in reliance on this paragraph unless conditions A, B and C are met.

(4) Condition A is that in the opinion of the Commissioners for Her Majesty's Revenue and Customs it would be unconscionable for the Commissioners for Her Majesty's Revenue and Customs to seek to recover the amount (or to withhold repayment of it, if it has already been paid).

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

(6) Condition C is that either—

(a) the person has not relied on this paragraph on a previous occasion (whether or not in respect of the same determination), or

(b) the person has done so, but in the exceptional circumstances of the case should be allowed to do so again on the present occasion.

(7) For the purposes of sub-paragraph (6)—

(a) a person has relied on this paragraph on a previous occasion if the person has made a claim (or a composite set of claims involving one or more determinations and accounting periods) in reliance on this paragraph on a previous occasion, and

(b) it does not matter whether that claim (or set of claims) succeeded.

(8) A claim made in reliance on this paragraph must include (in addition to anything required by Schedule 1A to the Taxes Management Act 1970) such information and documentation as is reasonably required for the purpose of determining whether conditions A, B and C are met.”.

**4.—**(1) In the following provisions (inserted by articles 2 and 3), references to reliance “on this paragraph” include reliance before the coming into force of this Order on the existing HMRC concession—

(a) paragraph 3A(6) and (7) of Schedule 1AB to the Taxes Management Act 1970, and

(b) paragraph 51BA(6) and (7) of Schedule 18 to the Finance Act 1998.

(2) “The existing HMRC concession” means the existing HMRC concession (within the meaning of section 160 of the Finance Act 2008) to which effect is given by articles 2 and 3.

**5.—**(1) The amendments made by articles 2 and 3 have effect in relation to determinations made before the date on which this Order comes into force (as in relation to determinations made on or after that date).

(2) But they do not apply to a determination made before that date if a claim for relief in respect of it has already been refused before that date.

(3) “Determination” means a determination under section 28C of the Taxes Management Act 1970(a) or paragraph 36 or 37 of Schedule 18 to the Finance Act 1998.

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(a) Section 28C was inserted by section 190 of the Finance Act 1994 (c. 9) and has effect in relation to income tax and capital gains tax for the year 1996-97 and subsequent years of assessment, and in relation to corporation tax for accounting periods ending on or after 1st July 1999. It was amended by sections 121(8), 125(1) and 205 of, and Part V(6) of Schedule 41 to, the Finance Act 1996 (c. 8); section 88(12) of, and paragraph 17(1) and (3) of Schedule 29 to, the Finance Act 2001(c. 9);

## **Life assurance premium relief after divorce**

6.—(1) In paragraph 1 of Schedule 14 to the Income and Corporation Taxes Act 1988(a) (spouses and civil partners), for sub-paragraph (1) substitute—

“(1) In section 266—

(a) references to an individual’s spouse include any person who—

- (i) was that individual’s spouse at the time the insurance or contract was made, or
- (ii) became that individual’s spouse after the insurance or contract was made,

unless the marriage was dissolved before 6th April 1979, and

(b) references to an individual’s civil partner include any person who—

- (i) was that individual’s civil partner at the time the insurance or contract was made, or
- (ii) became that individual’s civil partner after the insurance or contract was made.”.

(2) After that sub-paragraph insert—

“(1A) But an individual is entitled to relief by virtue of sub-paragraph (1)(a)(ii) or (b)(ii) only in respect of premiums payable after the date on which the person in question became that individual’s spouse or civil partner.”.

(3) The amendments made by this article have effect in relation to any premium paid on or after 1st April 2011.

## **Life assurance premium relief: repayment supplements**

7.—(1) Section 824 of the Income and Corporation Taxes Act 1988(b) (repayment supplements: individuals and others) is amended as follows.

(2) After subsection (2C)(c) insert—

“(2D) Subsection (1) shall apply—

- (a) to a repayment made as mentioned in section 270(4) (repayment of excess of life assurance premium relief clawed back over amount of liability)(d) as if the repayment were a repayment of income tax paid for the tax year in which the event concerned happened; and
- (b) to a payment made under paragraph 6(1) of Schedule 14 (payment where entitlement to life assurance premium relief has not been given by deduction) as if the payment were a repayment of income tax paid for the tax year in which the entitlement to relief arose.”.

(3) In subsection (3), after paragraph (ac)(e) insert—

“(ad) if the repayment is a payment falling within subsection (2D)(b), the relevant time is 31 January next following the end of the tax year in which the entitlement to relief arose;”.

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section 91(5) of the Finance Act 2007 (c. 11); and section 113(1) of, and paragraphs 1 and 2 of Schedule 39 to, the Finance Act 2008.

- (a) 1988 c. 1. Words in paragraph 1(1) substituted, and paragraph 1(1)(b) inserted, by regulations 47 and 101 of S.I. 2005/3229, with effect from 5 December 2005 (regulation 1(1)).
- (b) Subsection (1) was substituted by section 196 of, and paragraph 41(1) of Schedule 19 to, the Finance Act 1994, in relation to partnerships whose trades, professions or businesses are set up and commenced before 6th April 1994, with effect for the year 1997-98 and subsequent years of assessment, and otherwise with effect for the year 1996-97 and subsequent years of assessment. Subsections (2C) and (3)(ab) were inserted by section 90 (1) to (3) of the Finance Act 2001, in relation to repayments made on or after 11th May 2001.
- (c) Subsection (2C) was inserted by section 90 of the Finance Act 2001, in relation to repayments made after 11th May 2001.
- (d) Subsection (4) was amended by paragraphs 16 and 21 of Schedule 39 to the Finance Act 2008. This amendment comes into force on 1st April 2010, or on 1st April 2012 in certain circumstances.
- (e) Subsection (3)(ac) was inserted by article 4(1)(a) of S.I. 2010/157, with effect for the tax year 2010/11 and subsequent tax years.

**8.** In Part 2 of Schedule 54 to the Finance Act 2009(a) (repayment interest: special provision as to repayment interest start date), after paragraph 9C(b) insert—

*“Payments in connection with life assurance premium relief*

**9D.** In the case of a payment made under paragraph 6(1) of Schedule 14 to ICTA (payment where entitlement to life assurance premium relief has not been given by deduction), the repayment interest start date is 31 January next following the end of the tax year in which the entitlement to relief arose.”.

**9.**—(1) The amendments made by article 7 have effect in relation to any repayment or (as the case may be) payment made by HMRC on or after 1st April 2011.

(2) The amendment made by article 8 has effect in relation to any payment made by HMRC on or after 1st April 2011.

### **Certain employee legal costs paid by employer not taxed**

**10.**—(1) The Income Tax (Earnings and Pensions) Act 2003(c) is amended as follows.

(2) In section 401(2) (application of Chapter 3 of Part 6), for “413” substitute “413A”.

(3) After section 413(d) insert—

#### **“413A Exception for payment of certain legal costs**

(1) This Chapter does not apply to a payment which meets conditions A and B.

(2) Condition A is that the payment meets the whole or part of legal costs incurred by the employee exclusively in connection with the termination of the employee’s employment.

(3) Condition B is that either—

(a) the payment is made pursuant to an order of a court or tribunal, or

(b) the termination of the employee’s employment results in a compromise agreement between the employer and the employee and —

(i) the compromise agreement provides for the payment to be made by the employer, and

(ii) the payment is made directly to the employee’s lawyer.

(4) In this section—

“compromise agreement” means an agreement that satisfies the conditions regulating compromise agreements under the Employment Rights Act 1996 (see section 203(3)) or the Employment Rights (Northern Ireland) Order 1996 (see article 245(3));

“lawyer” has the same meaning as “qualified lawyer” in section 203(4) of the Employment Rights Act 1996 or article 245(4) of the Employment Rights (Northern Ireland) Order 1996;

“legal costs” means fees payable for the services and disbursements of a lawyer.”.

(4) The amendments made by this article have effect in relation to payments made on or after 6th April 2011.

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(a) 2009 c. 10. 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)).

(b) Paragraph 9C was inserted by paragraph 11 of Schedule 9 to the Finance (No. 3) Act 2010 (c. 33).

(c) 2003 c. 1.

(d) Section 413 has been amended but none of these amendments are relevant.

## **Wear and tear allowance**

**11.**—(1) The Income Tax (Trading and Other Income) Act 2005(a) is amended as follows.

(2) After section 308 (furnished lettings) insert—

*“Furnished accommodation: wear and tear allowance*

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

(1) Where—

- (a) a person (“P”) carries on a property business in a tax year which consists of or includes a furnished letting, and
- (b) a dwelling-house that is subject to the letting is eligible in relation to P at any time in the year,

P 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 must be made on or before the first anniversary of the normal self-assessment filing date for the tax year.

(3) In this section and sections 308B and 308C, “furnished letting” means a furnished letting as defined in section 308 but does not include a commercial letting of furnished holiday accommodation (within the meaning of Chapter 6).

(4) See—

- section 308B for the meaning of “eligible” in relation to a dwelling-house, and
- section 308C for the effect of a wear and tear allowance election.

### **308B Meaning of “eligible” in relation to a dwelling-house**

(1) A dwelling-house is “eligible” at any time in relation to a person (“P”) who carries on a property business in a tax year if, at that time—

- (a) the dwelling-house is subject to a furnished letting comprised in the business,
- (b) the dwelling-house contains sufficient furniture, furnishings and equipment for normal residential use, and
- (c) P is responsible for the state of affairs mentioned in paragraph (b).

(2) P is so responsible if—

- (a) any of the furniture, furnishings and equipment contained in the dwelling-house at the time mentioned in subsection (1) is provided by P,
- (b) that furniture, furnishings and equipment, together with any furniture, furnishings and equipment in the dwelling-house at that time provided by a superior landlord of P, is sufficient for normal residential use, and
- (c) the conditions in paragraphs (a) and (b) are not met in relation to a superior landlord of P.

(3) References in this section to a superior landlord of P are to any person who—

- (a) has an interest in the dwelling-house that is superior to that of P, and
- (b) carries on a property business in the tax year that consists of or includes a furnished letting to which the dwelling-house is subject.

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(a) 2005 c.5.

### **308C Effect of wear and tear allowance 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) whether under section 68 or otherwise, for expenses incurred on replacing or altering any tool (within the meaning of subsection (3) of that section), so far as the expenses are within subsection (6), or
  - (ii) whether under section 308 or otherwise, for expenses incurred in connection with the provision of furniture, so far as the expenses are within subsection (6).

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

(4) In subsection (3) “the relevant rental amount” means—

- (a) the sum of the amounts brought into account as receipts by P in calculating the profits of the property business, so far as the receipts are within subsection (6), less
- (b) the sum of any amounts brought into account as relevant expenses by P in calculating the profits of the property business, so far as the expenses are within subsection (6).

(5) In subsection (4)(b) “relevant expenses” means expenses in relation to utilities, council tax or anything else the cost of which is, in the case of a furnished letting, normally borne by the lessee.

(6) Receipts or expenses are within this subsection so far as they are attributable to a dwelling-house that is subject to a furnished letting comprised in the property business, but disregarding any amounts that are so attributable in respect of a time at which the dwelling-house is not eligible in relation to P.

(7) Receipts and expenses are to be attributed for the purposes of subsection (6) on a just and reasonable basis.

*Furnished accommodation: rent-a-room relief*”.

(3) In section 327 (separate profit calculations), in subsection (2)(a), at the end of paragraph (b) insert—

“, or

- (c) a wear and tear allowance is allowed in relation to the business under section 308C of this Act.”.

**12.**—(1) The Corporation Tax Act 2009(b) is amended as follows.

(2) After section 248 (furnished lettings) insert—

*“Furnished accommodation: wear and tear allowance*

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

(1) Where—

- (a) a company (“C”) carries on a property business in an accounting period which consists of or includes a furnished letting, and
- (b) a dwelling-house that is subject to the letting is eligible in relation to C at any time in the period,

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(a) Subsection (2) was amended by paragraphs 492 and 509 of Schedule 1 to the Income Tax Act 2007 (c. 3).

(b) 2009 c. 4.



C 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 must be made within the period of two years beginning at the end of the accounting period.

(3) In this section and sections 248B and 248C, “furnished letting” means a furnished letting as defined in section 248 but does not include a commercial letting of furnished holiday accommodation (within the meaning of Chapter 6).

(4) See—

section 248B for the meaning of “eligible” in relation to a dwelling-house, and section 248C for the effect of a wear and tear allowance election.

#### **248B Meaning of “eligible” in relation to a dwelling-house**

(1) A dwelling-house is “eligible” at any time in relation to a company (“C”) that carries on a property business in an accounting period if, at that time—

- (a) the dwelling-house is subject to a furnished letting comprised in the business,
- (b) the dwelling-house contains sufficient furniture, furnishings and equipment for normal residential use, and
- (c) C is responsible for the state of affairs mentioned in paragraph (b).

(2) C is so responsible if—

- (a) any of the furniture, furnishings and equipment contained in the dwelling-house at the time mentioned in subsection (1) is provided by C,
- (b) that furniture, furnishings and equipment, together with any furniture, furnishings and equipment in the dwelling-house at that time provided by a superior landlord of C, is sufficient for normal residential use, and
- (c) the conditions in paragraphs (a) and (b) are not met in relation to a superior landlord of C.

(3) References in this section to a superior landlord of C are to any person who—

- (a) has an interest in the dwelling-house that is superior to that of C, and
- (b) carries on a property business in the accounting period that consists of or includes a furnished letting to which the dwelling-house is subject.

#### **248C Effect of wear and tear allowance election**

(1) This section applies where a company (“C”) 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”).

(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) whether under section 68 or otherwise, for expenses incurred on replacing or altering any tool (within the meaning of subsection (3) of that section), so far as the expenses are within subsection (6), or
  - (ii) whether under section 248 or otherwise, for expenses incurred in connection with the provision of furniture, so far as the expenses are within subsection (6).

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

(4) In subsection (3) “the relevant rental amount” means—

- (a) the sum of the amounts brought into account as receipts by C in calculating the profits of the property business so far as the receipts are within subsection (6), less



- (b) the sum of any amounts brought into account as relevant expenses by C in calculating the profits of the property business so far as the expenses are within subsection (6).

(5) In subsection (4)(b) “relevant expenses” means expenses in relation to utilities, council tax or anything else the cost of which is, in the case of a furnished letting, normally borne by the lessee.

(6) Receipts or expenses are within this subsection so far as they are attributable to a dwelling-house that is subject to a furnished letting comprised in the property business, but disregarding any amounts that are so attributable in respect of a time at which the dwelling-house is not eligible in relation to C.

(7) Receipts and expenses are to be attributed for the purposes of subsection (6) on a just and reasonable basis.”.

(3) In section 269 (separate profit calculations), in subsection (2)(a), at the end of paragraph (b) insert—

“, or

- (c) a wear and tear allowance is allowed in relation to the business under section 248C of this Act.”.

**13.—**(1) The amendments made by article 11 have effect for the tax year 2011-12 and subsequent tax years.

(2) The amendments made by article 12 have effect for accounting periods beginning on or after 1st April 2011.

### **Fund raising events**

**14.—**(1) In section 529(2) of the Income Tax Act 2007(b) (exemption for profits of a trade carried on by charitable trust which arise from VAT-exempt events) for “applied to the purposes of the charitable trust only” substitute “either applied for charitable purposes or transferred to another charity”.

(2) The amendment made by this article has effect in relation to profits applied or transferred on or after 6th April 2011.

### **Qualifying life assurance policies**

**15.—**(1) In Schedule 15 to the Income and Corporation Taxes Act 1988(c) (qualifying policies), after paragraph 20(d) insert—

*“(viii) Policy reinstated after non-payment of premium*

**20ZA.—**(1) This paragraph applies to a qualifying policy (“the original policy”) if conditions A to D are satisfied.

(2) Condition A is that one or more premiums due under the original policy are not paid on or before the date on which they become due.

(3) Condition B is that the original policy, in accordance with its terms, is treated as having lapsed or is converted into a paid-up policy—

- (a) by reason only of the failure to pay that premium or those premiums, and
- (b) within the period of 12 months beginning with the day following the day on which the earliest unpaid premium becomes due.

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(a) Subsection (2) was amended by paragraphs 1 and 603 of Schedule 1 to the Corporation Tax Act 2010 (c. 4).

(b) 2007 c. 3.

(c) 1988 c. 1.

(d) Paragraph 20 was amended by paragraphs 1, 9 and 18 of Schedule 14 to, the Finance Act 2008 (c. 9). Paragraph 20A was inserted into Schedule 15 by paragraphs 1 and 233 of Schedule 1 to the Income Tax Act 2007.

(4) Condition C is that the original policy—

- (a) is reinstated on the same terms, or
- (b) is replaced by another policy in the same terms (“the replacement policy”),

on or before the thirtieth day after the first anniversary of the day following the day on which the earliest unpaid premium becomes due.

(5) Condition D is that all unpaid premiums due under the original policy are paid on or before the date on which the policy is reinstated or replaced.

(6) Where condition C is satisfied by virtue of sub-paragraph (4)(b) the replacement policy is to be treated for the purposes of this Schedule as if it were the original policy.

(7) The policy is to be treated for the purposes of this Schedule as if the premiums payable under it had been paid on their due dates.”.

(2) The amendment made by this article has effect in any case where the policy is reinstated or (as the case may be) replaced on or after 1st April 2011.

*Michael Fabricant*  
*Angela Watkinson*

30th March 2011

Two of the Lords Commissioners of Her Majesty’s Treasury

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order is made under section 160 of the Finance Act 2008 (c. 9) and enacts a number of existing HMRC extra-statutory concessions. This Order comes into force on 1st April 2011 and the individual concessions have effect from a variety of dates on or after 1st April 2011

Articles 2 to 5 allow HMRC to give effect to a claim for relief for overpaid tax where the usual time limits for such relief have expired. The relevant existing statutory framework for recovery of overpayments of tax is at Schedule 1AB to the Taxes Management Act 1970 (c. 9) (“TMA 1970”) and Schedule 18 to the Finance Act 1998 (c. 36) (“FA 1998”). Articles 2 and 3 insert a paragraph into those respective Schedules which allows for relief in circumstances where it would not otherwise be available under the relevant Schedule. This is because either the time in which to make a claim under that Schedule has elapsed or the person cannot obtain relief under that Schedule as either Case C or paragraph (a) of Case F of paragraph 2 of that Schedule applies and (in the latter case) the person was neither present nor legally represented during the enforcement proceedings. In addition to the remainder of the conditions found within the existing overpayment provisions, relief is only available under the new paragraphs inserted by articles 2 and 3 where the further conditions specified within those paragraphs are met. The relief is only available where a determination has been made under 28C of TMA 1970 or paragraph 36 or 37 of Schedule 18 of FA 1998. The claimant must bring his affairs up to date and it must be unconscionable for HMRC to pursue payment of the determined sum. Relief may only be claimed by the same person more than once under the relevant paragraph in exceptional circumstances.

Article 4 makes transitional provision concerning the effect of claims previously made by the same person under the concession known as ‘Equitable Liability’ details of which were published in Tax Bulletin 18 (1995) and HMRC’s Insolvency Manual at INS9351 and INS9352, which are available at [www.hmrc.gov.uk](http://www.hmrc.gov.uk).

Article 5 precludes a claim under the provisions inserted by articles 2 and 3 where a claim under that concession in respect of the same determination has been refused prior to this Order coming into force.

Article 6 amends paragraph 1(1) of Schedule 14 to the Income and Corporation Tax Act 1988 (c. 1) (“ICTA 1988”). It ensures that life assurance premium relief continues after dissolution of a marriage or civil partnership in respect of premiums paid by one person on the life of another if they married or entered into a civil partnership with one another after taking out the policy (unless, in the case of a married couple, they were divorced before 5th April 1979). Although life assurance premium relief only applies to certain life insurance policies or deferred annuity contracts issued after 13th March 1984, a significant number of such policies and contracts remain in force. Relief is only given in respect of premiums payable after the date of marriage or civil partnership.

Article 7 inserts a new subsection (2D) into section 824 of ICTA 1988 which applies excess amounts repayable under section 270(4) (where too much relief has been recouped by HMRC and needs to be repaid to the person who paid premiums under a qualifying insurance policy) and where HMRC is liable, by paragraph 6(1) of Schedule 14, to give further relief under section 266. Article 8 inserts a new paragraph 9D into Schedule 54 to the Finance Act 2009 (c. 10). Paragraph 9D specifies the dates from which repayment interest is to be calculated in the case of a payment made under paragraph 6(1) of Schedule 14 to ICTA 1988.

Article 10 inserts a new section 413A into the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (“ITEPA 2003”). This amendment makes statutory provision for a concession that relieves the payment of certain legal costs from the charge to income tax in section 403 of ITEPA 2003. Legal costs only qualify for this relief where they have been incurred by the employee exclusively in connection with the termination of the employee’s employment and are paid by the employer pursuant to a court order or direct to the lawyer under the terms of a compromise agreement.

Article 11 amends the Income (Trading and Other Income) Act 2005 (c. 5) (“ITTOIA 2003”) to insert sections 308A (wear and tear allowance election), 308B (meaning of “eligible” in relation to a dwelling house) and 308C (effect of wear and tear allowance election). Section 308A provides that a wear and tear allowance election may be made by a person carrying on a property business which consists of or includes a furnished letting of a dwelling-house which is eligible at any time in the tax year. A “furnished letting” does not include a commercial letting of furnished holiday accommodation. Section 308B provides that a dwelling-house is “eligible” in relation to a person if it contains, and that person (rather than a superior landlord) is responsible for, sufficient furniture, furnishings and equipment for normal residential use. Section 308C provides that in calculating the profits of a property business a wear and tear allowance is allowed as a deduction. No deduction is allowed for certain expenses relating to tools or the provision of furniture in so far as those expenses are attributable in respect of a time at which the dwelling-house is eligible. The amount of wear and tear allowance is 10% of the “relevant rental amount”. The relevant rental amount is the amount brought into account as receipts less any expenses which are normally borne by the lessee (such as utility bills or council tax) in so far as those receipts and expenses are attributable in respect of a time at which the dwelling-house is eligible. Receipts and expenses are attributable on a just and reasonable basis. Article 11(3) provides for a consequential amendment to section 327 of ITTOIA 2003 (separate profit calculations).

Article 12 amends the Corporation Tax Act 2009 (c. 4) to provide for the same treatment for corporation tax.

Article 14 amends section 529 of the Income Tax Act 2007 (c. 3) (“ITA 2007”). Section 529 of ITA 2007 provides that in calculating the total income accruing to a charitable trust, profits of a trade carried on by that charitable trust are not taken into account if they arise from fund-raising events which are exempt from VAT under Group 12 of Schedule 9 to the Value Added Tax Act 1994 (c. 23) provided that the profits are applied to the purposes of the charitable trust only. Article 14 amends section 529(2) of ITA 2007 by extending the section 529(1) exemption to circumstances where the profits of the trade are transferred to charities who will themselves be chargeable to tax if they do not use the profits for charitable purposes, or otherwise applied purely for charitable purposes, not being confined to charitable purposes carried on by the charitable trust in question.

Article 15 inserts a new paragraph 20ZA into Schedule 15 to ICTA 1988. Paragraph 20ZA enables life insurance policies which have either lapsed or been converted to paid-up because of a failure to pay the premiums due to be treated as continuing, provided that the policy is reinstated or replaced within 13 months of the first unpaid premium. Without this amendment, the reinstatement of such policies could affect their qualifying status under Schedule 15 and lead to a chargeable event.

A full Impact Assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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