

WITHDRAWAL OF EXTRA STATUTORY CONCESSIONS

Response by the Association of Taxation Technicians

1 Introduction

- 1.1 The Association of Taxation Technicians (ATT) is pleased to have the opportunity to respond to the 'Withdrawal of Extra Statutory Concessions' technical note and call for evidence ('the Consultation') issued by HMRC on 31 January 2014.
- 1.2 ATT understand the basis of the Consultation is, following the House of Lords' decision in the *Wilkinson* case, HMRC have reviewed its concessions with a view to removing those where they believe the scope of their discretion has been exceeded.
- 1.3 We comment below on a number of the concessions identified for withdrawal, from April 2015, where we consider there to be detrimental consequences.

2 Detailed commentary on the individual extra statutory concessions: VAT

2.1 VAT : Construction of New Student Residential Accommodation

Subject to conditions, the zero rate of VAT applies to the construction of and certain disposals of 'residential accommodation for students or school pupils'. One of the relevant conditions is that the building(s) must be used 'solely' for this purpose.

In 1990, HMRC agreed an Extra Statutory Concession (ESC) with Higher Educational Institutions (HEIs) which aided them with complying with the 'solely' criteria. Under the terms of the ESC, HEIs only had to satisfy HMRC that the building(s) would be used 'solely' as residential accommodation during term time. They have accordingly been and are able to ignore how the building(s) might be used during vacations.

Withdrawing this ESC invariably means that substantiating when a relevant building is used 'solely' for residential purposes will become more complex. This creates more work and administration for HEIs. There is probably a corresponding increase in HMRC's workload when they choose to verify this test has been satisfied.

Another significant downside is that, if it becomes more difficult to substantiate that a relevant building is used 'solely' as student accommodation, fewer buildings will qualify for zero rating.

This will increase the VAT payable by HEIs and direct more funds away from their core activities. It will not be revenue-neutral.

2.2 **VAT: New Student Dining Hall**

Since 1997, HMRC have accepted, under this concession, that dining rooms and kitchens are part of student or school residential accommodation if they are used 'predominantly' by the students in residence. Accordingly, the dining halls and kitchens qualify as zero rated where they are part of the construction or sale of new residential accommodation for students or school pupils, which is itself a zero rated activity.

The 'predominantly' test, which has applied since 1997, is to be replaced with a more stringent test. The more stringent test is that HEIs and schools will need to substantiate that the relevant dining halls and kitchens will be used 'solely' by students from the associated residential accommodation, their guests or anyone who 'looks after the building for a relevant residential purpose'. We note 'solely' is interpreted in this context as meaning at least 95%.

The new test will be more difficult to apply in practice. It also raises the bar for dining halls and kitchens to be considered part of student accommodation in the first place.

If it becomes more difficult to substantiate when, in the right circumstances, dining halls and kitchens should be regarded as part of a relevant building used 'solely' as student accommodation, fewer buildings are likely to qualify for zero rating. This will increase the VAT payable by HEIs and direct more funds away from their core activities. It will not be revenue-neutral.

2.3 **VAT: Reduced Value Rule for Long Stay Accommodation – breaks in stay**

We note that the purpose of this measure is to simplify the 'calculation of VAT in respect of long stays in hotels by assessing on a flat-rate basis the part of the service deemed to correspond to a letting of immovable property'.¹ If the aim is for this to 'correspond to a letting of immovable property' we consider it must allow for times when the person with rights over the relevant property is not in actual occupation of it.

This derogation only has effect after a hotel guest has been in residence for 28 days. The proposal is that a new period of 28 days will commence when a guest vacates the accommodation, except in circumstances when 'the guest can return at any time and continue their occupancy of the room, or a similar room, as if they had never vacated it'. This phraseology does allow for some breaks in stays.

Our concern is about the records and/or evidence hoteliers must hold and keep to substantiate that 'the guest can return at any time'. It would be extremely helpful to all concerned if this could be agreed beforehand with full details being published in advance of implementation.

¹ EU Official Journal L 359 19/12/1986 page 0059

2.4 **VAT: Tour Operators Margin Scheme: Use of a fixed rate margin (10%) for shore excursions sold by cruise operators**

We are not in a position to comment on this particular measure.

3 Detailed commentary on the individual extra statutory concessions: Inheritance Tax

3.1 **ESC F8: Accumulation and maintenance trusts**

The ATT would be pleased to review the revised guidance for the interpretation of section 71D IHTA, before ESC F8 is withdrawn.

3.2 **ESC F11: Property chargeable on ceasing an annuity**

We note that the proposed withdrawal of this ESC is considered appropriate because of the absence of cases in recent years where this concession was used. That does not, in our opinion, justify its withdrawal. ESCs, almost by definition, exist to deal with the cases that cannot be dealt with appropriately under legislation - and so are expected to be of a 'few and far between' nature. We also observe in passing that this is a very different basis for the withdrawal of an ESC from the *Wilkinson* argument.

We note that it is proposed that the point will be covered in guidance. We would be pleased to review this guidance before the concession was withdrawn.

3.3 **ESC I8: Treatment of income tax in Canada on capital gains deemed to arise on a person's death**

We note that HMRC will clarify their interpretation of the law applying to this issue. We would be pleased to review this guidance before the concession is withdrawn.

4 Summary and conclusions

4.1 Whilst acknowledging that ESCs operate to enable a departure from the strict statutory position, we note that they have always been a useful tool for righting anomalies and making the applications of certain pieces of statute more straightforward.

This Association is always seeking ways by which legislation and/or its application can be made more straightforward. These proposed changes are contrary to that objective and we regret that more practical concessions, in particular for simplifying the application of VAT, are being withdrawn.

Contact details:

Should you wish to discuss any aspect of these comments, please contact our relevant Technical Officer, Alison Ward, on 07762 947 910 or at award@att.org.uk.

Yours sincerely

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Chairman, ATT Technical Committee

5 Note

- 5.1 The Association is a charity and the leading professional body for those providing UK tax compliance services. Our primary charitable objective is to promote education and the study of tax administration and practice. One of our key aims is to provide an appropriate qualification for individuals who undertake tax compliance work. Drawing on our members' practical experience and knowledge, we contribute to consultations on the development of the UK tax system and seek to ensure that, for the general public, it is workable and as fair as possible.

Our members are qualified by examination and practical experience. They commit to the highest standards of professional conduct and ensure that their tax knowledge is constantly kept up to date. Members may be found in private practice, commerce and industry, government and academia.

The Association has over 7,500 members and Fellows together with over 5,000 students. Members and Fellows use the practising title of 'Taxation Technician' or 'Taxation Technician (Fellow)' and the designatory letters 'ATT' and 'ATT (Fellow)' respectively.