
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.

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.