

Draft Order laid before the House of Commons under section 160(7) of the Finance Act 2008 for approval by resolution of that House.

DRAFT STATUTORY INSTRUMENTS

2011 No.000

**CORPORATION TAX
INCOME TAX
CAPITAL GAINS TAX**

The Enactment of Extra-Statutory Concessions Order 2011

Made - - - - *****
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⁽¹⁾.

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⁽²⁾ (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—

(1) 2008 c. 9.

(2) 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.

“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—
 - (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(3) (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.”.

(3) 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.

(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
 - (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(4) or paragraph 36 or 37 of Schedule 18 to the Finance Act 1998.

Life assurance premium relief after divorce

6.—(1) In paragraph 1 of Schedule 14 to the Income and Corporation Taxes Act 1988(5) (spouses and civil partners), for sub-paragraph (1) substitute—

6.—“(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(6) (repayment supplements: individuals and others) is amended as follows.

(2) After subsection (2C)(7) insert—

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- (4) 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); 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.
 - (5) 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)).
 - (6) 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.
 - (7) Subsection (2C) was inserted by section 90 of the Finance Act 2001, in relation to repayments made after 11th May 2001.

“(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)(8) 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)(9) 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;”.

8. In Part 2 of Schedule 54 to the Finance Act 2009(10) (repayment interest: special provision as to repayment interest start date), after paragraph 9C(11) 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(12) is amended as follows.

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

(3) After section 413(13) insert—

“Exception for payment of certain legal costs

413A.—(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.

(8) 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.

(9) 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.

(10) *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)).

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

(12) *2003 c. 1*.

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