

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Eighth Delegated Legislation Committee

DRAFT ENACTMENT OF EXTRA-STATUTORY
CONCESSIONS ORDER 2017

Thursday 23 March 2017

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Monday 27 March 2017

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The Committee consisted of the following Members:

Chair: Ms KAREN BUCK

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|---------------------------------------------------------------------------|----------------------------------------------------------------|
| † Alexander, Heidi (<i>Lewisham East</i>) (Lab) | † Jayawardena, Mr Ranil (<i>North East Hampshire</i>) (Con) |
| † Barclay, Stephen (<i>Lord Commissioner of Her Majesty's Treasury</i>) | Jones, Graham (<i>Hyndburn</i>) (Lab) |
| † Beresford, Sir Paul (<i>Mole Valley</i>) (Con) | † Mak, Mr Alan (<i>Havant</i>) (Con) |
| Bridgen, Andrew (<i>North West Leicestershire</i>) (Con) | Reynolds, Jonathan (<i>Stalybridge and Hyde</i>) (Lab/Co-op) |
| † Donelan, Michelle (<i>Chippenham</i>) (Con) | † Smith, Jeff (<i>Manchester, Withington</i>) (Lab) |
| † Ellison, Jane (<i>Financial Secretary to the Treasury</i>) | Stuart, Ms Gisela (<i>Birmingham, Edgbaston</i>) (Lab) |
| † Elphicke, Charlie (<i>Dover</i>) (Con) | † Wilson, Corri (<i>Ayr, Carrick and Cumnock</i>) (SNP) |
| † Fuller, Richard (<i>Bedford</i>) (Con) | Gavin O'Leary, <i>Committee Clerk</i> |
| † Glen, John (<i>Salisbury</i>) (Con) | † attended the Committee |
| † Green, Kate (<i>Stretford and Urmston</i>) (Lab) | |

Eighth Delegated Legislation Committee

Thursday 23 March 2017

[MS KAREN BUCK *in the Chair*]

Draft Enactment of Extra-Statutory Concessions Order 2017

11.30 am

The Financial Secretary to the Treasury (Jane Ellison): I beg to move,

That the Committee has considered the draft Enactment of Extra-Statutory Concessions Order 2017.

It is a pleasure to serve under your chairmanship, Ms Buck, on this rather sombre day, but we meet as scheduled to carry on the work of the House.

As some Committee members may be aware, Her Majesty's Revenue and Customs continues to review its extra-statutory concessions following clarification of HMRC's administrative powers by the courts in the Wilkinson case in 2008. The order before us is another step in that process and will put three ESCs on a statutory footing. The concessions legislated for in the order, although not affecting a great number of taxpayers, exist to ensure that the tax rules operate fairly and consistently. The order will ensure that reliefs continue to be available in the scenarios covered by the original concessions.

The order has been fully consulted on, and I am grateful to those who took the time to help the Government to improve the legislation. I will give a little detail for each ESC.

ESC D40 concerns the charge to capital gains tax in respect of gains made by trustees of a non-resident trust. It makes a minor modification to the scope of the anti-avoidance legislation that applies a capital gains tax charge on individuals who settle a property into an offshore trust, and on individuals who are beneficiaries of offshore trusts. The capital gains tax legislation has rules that prevent a tax charge from being avoided if payments to and from the trust are made through a company controlled by the individuals. ESC D40 does not change those rules, but it prevents them from applying to individuals who are treated as controlling the company only because they are beneficiaries of the trust, not because they actually own shares in the company.

ESC F15 provides some relief from inheritance tax on transfer of a property that includes woodlands benefiting from a deferred estate duty charge. When a property

containing such woodlands is transferred between owners, inheritance tax is charged on the whole property. The ESC mitigates that by providing that inheritance tax applies only to the woodlands portion of the transfer, rather than to the transfer as a whole. The remaining portion of the transferred property is treated as a potentially exempt transfer for inheritance tax purposes.

ESC 3.20 is designed to ensure fairness for the general body of creditors in an insolvency. Without the concession, certain VAT debts incurred pre-insolvency would be payable ahead of any fees or charges incurred by the insolvency practitioner. That could deter practitioners from acting in some cases and lead to all creditors losing out. I will explain a little about the mechanics of the VAT provision, including why the concession and this legislation are necessary.

The law allows taxpayers to claim bad debt relief on certain supplies that they make if they have not received payment themselves, but where the taxpayer's customer is a taxable person for VAT purposes, that customer must repay to HMRC the VAT that they themselves have already recovered in respect of such purchases. That is known as clawback. The clawback provision is designed to maintain the integrity of the VAT system and to counter avoidance by preventing manipulation of the bad debt relief rules by associated suppliers and customers, but as I have explained, in insolvency cases the usual operation of the law prejudices the general body of creditors, because any clawback in respect of the insolvent trader's unpaid debts pre-insolvency becomes due from the insolvency practitioner post insolvency ahead of any other costs.

Should the Committee pass the draft ESC order, it will be made and come into force on 1 April 2017. I am grateful for the cross-party support to date for the rolling programme of legislating for concessions and the valuable benefits that the ESCs provide. This order will ensure that concessionary treatments continue to provide relief as originally intended, so I am pleased to commend it to the Committee.

11.34 am

Jeff Smith (Manchester, Withington) (Lab): It is a pleasure to serve with you in the Chair, Ms Buck. I thank the Minister for outlining the detail of the order. The Opposition will not prolong the sitting, particularly given the business happening in the House today, so I will simply say that we have listened to the Minister and read the order; we formally note it and do not object.

Question put and agreed to.

11.35 am

Committee rose.