

## AAT RESPONSE TO THE HMRC CONSULTATION ON “LEGISLATING EXTRA STATUTORY CONCESSION D33”

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### 1 EXECUTIVE SUMMARY

- 1.1 The Association of Accounting Technicians (AAT) is pleased to comment on the issues raised in the HMRC consultation on “Legislating Extra Statutory Concession D33” (condoc).
- 1.2 AAT is participating in this consultation on behalf of our membership and from the wider public benefit perspective of achieving sound and effective administration of taxes.
- 1.3 Extra Statutory Concession (ESC) D33 is a pragmatic approach to the treatment of a capital sum received as a right of action. We note and acknowledge the need for HMRC to review ESC D33 in the light of the case of *HM Commissioners of Inland Revenue ex parte Wilkinson* [2005 UKHL 30].
- 1.4 AAT concludes that the proposal to replace ESC D33, with legislation should include a provision to link the mooted £1m exemption to inflation and for it to be regularly reviewed (4.1, below).

### 2 OBJECTIVE OF THIS CONSULTATION

- 2.1 We note the subject and scope of the consultation, as set out in page 2 (condoc), is the proposal to replace the long standing Extra Statutory Concession (ESC) D33 with additional legislation.
- 2.2 Furthermore, the consultation is proposing to replace the existing, recently introduced, £500,000 limit (3.3, below) with an absolute limit of a £1m exemption for compensation, whereby amounts in excess of the £1m limit would be subject to Capital Gains, or Corporation, Tax.

### 3 OVERVIEW

- 3.1 In the case of *Zim Properties Ltd v Proctor* (1984) a sale of property could not be completed because of a lost document. Zim was obliged to withdraw from the sale and forfeited the deposit paid by its customer and paid the customer’s legal costs. As a result Zim sued its solicitors and received an out of court settlement. HMRC considered that the settlement was a Capital Gain arising from the crystallisation of the right to damages at the moment of the settlement. Tax was due accordingly.

- 3.2 ESC D33 covers such capital gains arising from the right of action as described in 3.1(above). The concession covers a number of circumstances in which a capital sum is received as compensation or damages for a right of action that is capital in the hands of the recipient and subject to capital gains tax under TCGA 1992, s 22 i.e. where compensation is received that does not relate to a chargeable asset. It does not apply where a capital sum has been derived from any other type of asset including statutory rights or contractual rights.
- 3.3 On 23 June 2014, HMRC revised Extra-Statutory Concession D33 (ESC D33). HMRC's principal revision to ESC D33 is that, from 27 January 2014, the exemption from chargeable gains taxation for compensation not linked to an asset (paragraph 11, ESC D33) ceased to be uncapped and the first £500,000 of compensation awarded in each single legal proceedings are exempt. Exemption for awards above that amount must be claimed from HMRC.

#### 4 THE CONSULTATION DOCUMENT

##### Question 1

Is £1 million the right level of exemption? If not, what would be a more appropriate amount and why?

- 4.1 AAT does not seek to express a view over the suitability of a £1m ceiling for exemption. We do, however, consider that the ceiling ultimately selected should be subject to a periodic review, say every 3 to 5 years, to ensure that its value is increased in line with inflation in an attempt to preserve its value in real terms.

##### Question 2

Are you aware of any cases which would be taxable under the proposed changes which would result in hardship?

- 4.2 AAT is unaware of any cases which would be taxable under the proposed changes which would result in hardship.

**Question 3**

Should the exemption in section 51(2) TCGA include compensation paid for any wrong or injury suffered by an individual in their trade or employment?

- 4.3 We agree with the proposal to extend the current s.51(2) TCGA wording from its current narrow focus on “profession or vocation” to include “trade or employment” and see it as a commonsense measure that will reduce the scope for ambiguity or narrow interpretation.

**Question 4**

Should the exemption in section 51(2) TCGA include compensation paid

- to a person other than the individual who suffered the wrong or injury, such as relatives or personal representatives of a deceased person?
- to compensation for emotional distressed caused by the death of another person
- to compensation for loss of financial support?

- 4.4 AAT agrees that relatives and personal representatives should benefit from the s.51(2) TCGA exemption as set out in the three bullet-point instances set out in question 4.

**Question 5**

Do you agree that section 49(1)(c) TCGA should include indemnities?

- 4.5 AAT agrees that s 49(1)(c) TCGA should include indemnities.
- 4.6 The purchase of an indemnity usually defines the circumstances under which compensation will be paid and the amounts payable. Payments in excess of this definition are still associated with the asset indemnified and would not fall within the scope of ESC D33.

### **Question 6**

Do you have any comments on the assessment of equality and other impacts?

4.7 AAT does not wish to make any comment to make in respect of the Assessment of Impacts statement.

## **5 CONCLUSION**

5.1 AAT supports the proposal to replace ESC D33 with appropriate legislation, where a capital sum is received from a right of action should include a provision for the exemption limit to be linked to inflation and regularly reviewed (4.1, above).

## **6 ABOUT THE AAT**

6.1 AAT is a professional accountancy body with over 49,600 full and fellow members and 74,000 student and affiliate members worldwide. Of the full and fellow members, there are 4,000 Members in Practice who provide accountancy and taxation services to individuals, not-for-profit organisations and the full range of business types. (Figures correct as at 30 June 2014)

6.2 AAT is a registered charity whose objectives are to advance public education and promote the study of the practice, theory and techniques of accountancy and the prevention of crime and promotion of the sound administration of the law.

6.3 In pursuance of those objectives AAT provides a membership body. We are participating in this consultation not only on behalf of our membership but also from the wider public benefit perspective of achieving sound and effective administration of taxes.

6.4 Thank you for the opportunity to respond to the HMRC consultation document on "Legislating Extra Statutory Concession D33".



### **Further engagement**

If you have any questions arising from our submission or would like to discuss any of the points in more detail then please contact the AAT at:

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