



Equitable Liability

Consultation Document

Publication date: 12 July 2010

Closing date for comments: 01 October 2010

Subject of this consultation:	The draft legislation needed to give legislative effect to the concessionary treatment known as 'Equitable Liability'. By concession and subject to certain conditions HMRC reduce legally due direct tax liabilities to the sum that would have been due had the taxpayer complied on time with his obligations under the tax system.
Scope of this consultation:	This is a technical consultation to help ensure that the draft legislation successfully preserves the main effects of the current concession.
Impact Assessment:	The intention is to do no more than put the existing concessionary tax treatment on a statutory basis and as such there should be no, or only negligible, impact and an Impact Assessment is therefore not required.
Who should read this:	Taxpayers and their advisers with an interest in the current Equitable Liability concession.
Duration:	Monday 12 July – Friday 01 October 2010.
Responses:	<p>Katie Lunt HMRC Tax Administration Advice Team 4SW Queens Dock Liverpool L74 4AA.</p> <p>Telephone: 0151 703 8061 Fax: 0151 703 8452 e-mail: Katie.lunt@hmrc.gsi.gov.uk</p>
Enquiries:	As above.
Additional ways to become involved:	If you are interested in meeting with us to discuss this consultation please contact Katie Lunt (details above).
After the consultation:	We will publish a summary of responses and the revised legislation will be included in an Order to be laid before Parliament in due course.
Getting to this stage:	Following the House of Lords' judgment in the <i>Wilkinson</i> case HMRC has been reviewing its Extra Statutory Concessions and administrative practices. In the light of this judgment, concessions that exceed our administrative powers must either be withdrawn or legislated. Following a number of meetings with taxpayer representative bodies the previous Government announced that legislation would be introduced to preserve the effect of this particular concession rather than withdraw it, and the current Government will honour that commitment.
Previous engagement:	Explanatory notes on section 160 FA 2008, the primary legislation providing the power to enact existing concessions by Treasury Order, can be found on the HM Treasury website. There have been 3 consultations on legislation to be made under section 160 FA 2008 (03 November 2008, 15 July 2009 and 09 December 2009); these consultations can be found on the HMRC website at http://www.hmrc.gov.uk/consultations/index.htm

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On request this document can be produced in alternative languages and formats including large print, audio formats and Braille

1. The Consultation Process

How to respond

Responses should be sent by Friday 01 October 2010

by email to: katie.lunt@hmrc.gsi.gov.uk

by post to : Katie Lunt, Tax Administration Advice Team, 4SW Queens Dock, Liverpool, L74 4AA

by fax to : 0151 703 8452

Telephone enquiries: 0151 703 8061

Paper copies of this document or copies in alternative languages and formats may be obtained free of charge from the above address. This document can also be accessed from the HMRC Internet site at <http://www.hmrc.gov.uk/consultations>. All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Revenue and Customs (HMRC).

HMRC will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

The Consultation Code of Practice

This consultation is being conducted in accordance with the Code of Practice on Consultation. A copy of the Code of Practice criteria and a contact for any comments on the consultation process can be found in the Annex.

2. Introduction

- 2.1 The House of Lords' decision on the *Wilkinson* case¹ clarified the scope of HM Revenue and Customs' (HMRC) administrative discretion to make concessions that depart from the strict statutory position. In the light of that decision, HMRC is reviewing its concessions and those that exceed HMRC's administrative powers will be either withdrawn or legislated.
- 2.2 The purpose of the equitable liability concession is to provide a "relief of last resort" for certain taxpayers, particularly those vulnerable taxpayers who are unable to fully engage with the tax system, for a number of different reasons. The previous government announced the intention to legislate to preserve the effect of this concession rather than withdraw it as originally announced. The current Government will honour that commitment.
- 2.3 Section 160 of FA 2008 provides an enabling power which allows the tax treatment afforded by existing concessions to be legislated by Treasury Order. It is proposed to use this power to legislate for the effect of equitable liability.

Scope of this consultation

- 2.4 The purpose of this consultation is to expose for comment draft legislation which is intended to largely maintain the existing tax treatment currently afforded by this concession.

Impact Assessment

- 2.5 It is usual practice for consultation documents to be accompanied by an Impact Assessment. There is no impact assessment in this case because, as the intention is to maintain the effect of the existing concession by putting the treatment on a statutory basis, there should be no, or only negligible, impact as a result of the proposed legislation.

Way forward

- 2.6 This document consults on whether the draft legislation maintains the purpose and effect of the ESC. Following consideration of any responses, a Treasury Order will be laid in due course to legislate for the concession. Until such time as the legislation is given effect, the current concession may continue to be used in its present form.
- 2.7 At Chapter 3 this document sets out –
- A. The text of the equitable liability concession as published
 - B. Draft legislation to give legislative effect to the tax treatment afforded by the concession
 - C. An explanation of the draft legislation, including its fit with the current rules for claiming and giving effect to relief within the self assessment system.
- 2.8 Chapter 4 provides a brief summary of how the new relief is intended to work in practice. This will be supplemented by formal guidance when the statutory relief is introduced.

¹ R v HM Commissioners of Inland Revenue ex parte Wilkinson [2005] UKHL 30

3. Equitable Liability

A. Text of Concession

Tax Bulletin Issue 18

INLAND REVENUE TAX BULLETIN

Issue 18 (1995)

EXCESSIVE ASSESSMENTS: THE PRACTICE KNOWN AS 'EQUITABLE LIABILITY'

Most people keep their tax affairs up to date and pay their tax at the right time. If people have genuine difficulties in meeting their payments they should let us know as soon as possible. The more we are kept informed, the more we are likely to be able to help.

If a taxpayer receives an assessment and does not think it is right, he or she can appeal against it and has thirty days from the date on which the notice of assessment was issued to do so. Inspectors will accept appeals once that time limit has passed if they are satisfied that there was a reasonable excuse for not making the appeal within the time limit and the application to admit the appeal late was made without unreasonable delay thereafter. If the Inspector does not think these requirements have been met, the application must be referred to the Appeal Commissioners for a decision. The Appeal Commissioners are completely independent of the Inland Revenue and their decision on this matter is final.

Otherwise, an assessment is final and conclusive and the Inland Revenue is able to take recovery proceedings -- through to bankruptcy if necessary -- for the full amount. There is no legal right to adjustment of the liability.

However, where the taxpayer has exhausted all other possible remedies, the Inland Revenue may, depending on the circumstances of the particular case, be prepared not to pursue its legal right to recovery for the full amount where it would be unconscionable to insist on collecting the full amount of tax assessed and legally due.

This practice is known as 'equitable liability' and was originally introduced to protect other creditors in a bankruptcy at a time when, prior to the 1986 Insolvency Act in particular, the Inland Revenue's preferential rights were wider. Crown preference meant that, if the Inland Revenue maintained an 'excessive' claim for a sum above that which would be due if based on the true profits, other creditors would be at a disadvantage. The term 'equitable liability' therefore reflects the original principle of fairness to other creditors.

It has become increasingly apparent to us that, while many practitioners know of this practice, some do not. To remedy this apparent unfairness, the Chairman of

the Board of Inland Revenue confirmed in evidence to the Select Committee on the Parliamentary Commissioner for Administration that we would publish an explanation of the practice in an article in Tax Bulletin.

The Inland Revenue may be prepared to consider applying 'equitable liability' where, in the circumstances of the particular case and in the light of all the evidence, it is clearly demonstrated that:

- the liability assessed is greater than the amount which would have been charged had the returns, and necessary supporting documentation, been submitted at the proper time, and**
- acceptable evidence is provided of what the correct liability should have been.**

In such cases the Inland Revenue may be prepared to accept a reduced sum based on the evidence provided, and not to pursue its right of recovery for the full amount.

This treatment will depend on the circumstances of the particular case, and is conditional on the taxpayer's affairs being brought fully up to date. The Inland Revenue would expect full payment to be made of the reduced sum. Furthermore, it would be most unusual for such treatment to be applied more than once in favour of the same taxpayer.

In determining the revised liability, the Inland Revenue will have regard to all the relevant circumstances of the case. Acceptable evidence of the reduced liability must be produced. It will not be sufficient to seek to replace the assessment merely with the taxpayer's or the accountant's estimate of the liability.

Cases are dealt with in the Inland Revenue's Enforcement Offices in Worthing and Belfast and Enforcement Section in Edinburgh, but Inspectors in local offices will be involved in considering the quantum of any claims for reduction of liability and the acceptability of the supporting evidence.

POSITION UNDER SELF ASSESSMENT

Self Assessment will change the way in which liability is established and will remove the Inland Revenue's reliance on estimated assessments. The liability that taxpayers declare on their returns should normally reflect their proper liability and there should be no need for the Inland Revenue to review those cases in the way described above.

However, where a taxpayer has not submitted his or her return, the Inland Revenue can determine the taxpayer's likely tax liability so that the tax can be pursued. There is no right of appeal against such determinations, and the tax determined is legally enforceable. Taxpayers can displace the determination with their own self assessment at any time up to the fifth anniversary of the statutory filing date

for the year of assessment in question (or one year after the determination was issued, if later).

It is unlikely therefore, that the point will often be reached where a determination can no longer be displaced. Where exceptionally that does occur and the conditions of the practice described are fulfilled, then the Inland Revenue will be prepared to consider extending their practice to meet this situation.

B. Draft Legislation

Special relief

1.—(1) Schedule 1AB to the Taxes Management Act 1970 (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—

“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)), or
 - (ii) more than 4 years have elapsed since the end of the relevant tax year (see paragraph 3(1)), and
- (c) the person has not made a claim in reliance on this paragraph on any previous occasion (whether or not in respect of the same determination or the same tax).

(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) or, as the case may be, paragraph 3(1).

(3) But the Commissioners are not liable to give effect to a claim made in reliance on this paragraph unless conditions A and B are met.

(4) Condition A is that 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) 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 and B are met.”

2.—(1) Part 6 of Schedule 18 to the Finance Act 1998 (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.”

(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)), or

- (ii) more than 4 years have elapsed since the end of the relevant accounting period (see paragraph 51B(1)), and
 - (c) the person has not made a claim in reliance on this paragraph on any previous occasion (whether or not in respect of the same determination).
- (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) or, as the case may be, paragraph 51B(1).
- (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 and B are met.
- (4) Condition A is that 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) 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 and B are met.”

Transitional provision

3.—(1) In the following provisions (inserted by articles 2 and 3), the reference to a claim made “in reliance on this paragraph” includes a claim made in reliance on the existing HMRC concession before the coming into force of this Order—

- (a) paragraph 3A(1)(c) of Schedule 1AB to the Taxes Management Act 1970, and
- (b) paragraph 51BA(1)(c) 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.

Commencement

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

C. Explanation

Introduction

- 3.1 The approach adopted in legislating the effect of the equitable liability concession is to insert a new type of relief, entitled “special relief”, into Schedule 1AB Taxes Management Act 1970 (TMA) (for income and capital gains tax and Class 4 NICs), and into Part 6 of Schedule 18 to the Finance Act (FA) 1998 (for corporation tax). These provisions deal with recovery of overpaid tax, and replaced error or mistake relief from April 2010.
- 3.2 The draft provisions replicate the main conditions which must be satisfied at present if the concession is to apply. Relief can be claimed only if:
- the claimant can demonstrate the determined sum is excessive (new paragraph 3A(1)(a) of Schedule 1AB TMA and new paragraph 51BA(1)(a) of Schedule 18 FA 1998 and paragraph 2(5)(b) Sch 1A TMA);
 - the claimant tells us the actual amount he believes is due for the period (paragraph 2(5)(a) Schedule 1A TMA);
 - there is no other remedy available (“Case B”, paragraph 2(3) Schedule 1AB and paragraph 51A(3) Schedule 18 FA 1998);
 - the claimant brings his affairs up to date (new paragraph 3A(5) Schedule 1AB TMA and new paragraph 51BA(5) Schedule 18 FA 1998);
 - the relief has not been claimed before (new paragraph 3A(1)(c) Schedule 1AB TMA and new paragraph 51BA(1)(c) Schedule 18 FA 1998); and
 - it would be unconscionable for HMRC to pursue the determined sum (new paragraph 3A(4) Schedule 1AB TMA and new paragraph 51BA(4) Schedule 18 FA 1998).

There is no time limit for making a claim (new paragraph 3A(1)(b)(ii) Schedule 1AB TMA and new paragraph 51BA(1)(b)(ii) Schedule 18 FA 1998).

- 3.3 In translating this concessionary treatment to a statutory relief we have looked closely at the type of cases in which the concessionary treatment has been requested and granted in recent years. We looked at the other remedies that might be available to the claimant as well as considering carefully how this relief could be framed to ensure it did not undermine the time limits within the self assessment system and the compliance effect of issuing a determination.
- 3.4 We occasionally receive requests for relief from income tax due from an employer under a regulation 80 determination, but these determinations carry an appeal right, as do revenue assessments made under the pre-self assessment regime. Wherever there is an appeal right, the taxpayer then has the opportunity to present his case for acceptance of the late appeal or for relief to the tax tribunal. In drafting this new relief we have limited it to those taxpayers within the self assessment regime who have been issued with determinations because there is no appeal against determinations issued under the self assessment system.
- 3.5 The draft legislation provides that where the necessary conditions are met, and sufficient evidence is provided of the true liability for the period, HMRC will reduce the tax shown as due on the determinations (our estimate of the sums due for the period and which are legally enforceable) to the amount now shown as due by the evidence. In doing this HMRC will set off any overpayment already made by the claimant against the determinations and repay any balance. Repayment of such sums is not made under the current concession.
- 3.6 As with any relief we need to be able to enquire into a claim to test the credibility of the evidence provided to support it. There will be a right of appeal against any subsequent amendment we may make to the claim.

Schedule 1AB TMA

- 3.7 In order to explain the new legislation it is necessary to briefly mention the main parts of this schedule that will apply to the new “special relief”. Schedule 1AB TMA covers the income and capital gains tax and Class 4 NICs position. A similar provision for corporation tax is set out at paragraphs 51 to 51G of Part 6 of Schedule 18 FA 1998, but the detail on those provisions and the effect of the insertions made by the draft legislation is not spelt out here as they mirror those for income tax under the ITSA system.
- 3.8 Paragraph 1(1) of Schedule 1AB TMA states that overpayment relief can be claimed in a number of situations, and specifically at paragraph 1(1)(b) where a determination is in place, but the person believes that the tax is not due.
- 3.9 Paragraph 1(2) provides that the person may make a claim to the Commissioners for repayment or discharge of the amount. These two provisions mean that a taxpayer who believes some or all of the tax shown as due on the determination is not due may make a claim for relief from the part of the determined tax that they believe is not due.
- 3.10 Paragraph 2 sets out the Cases in which the Commissioners will not provide such relief.
- 3.11 Paragraph 3 states that a claim under Schedule 1AB TMA may not be made more than 4 years after the end of the relevant tax year, and goes on to explain the term “relevant tax year”. Paragraph 3(4) states that a claim may not be included in a return.
- 3.12 The draft legislation set out at Chapter 3B above makes amendments to Schedule 1AB (see the article 1(1)-(3) provisions) and inserts new paragraph 3A for “special relief” into Schedule 1AB TMA (see the article 1(4) provision)).
- 3.13 The article 2(1)-(3) amendments disapply the time limit in paragraph 3 Schedule 1AB TMA for claiming relief but retain the requirement that the relief cannot be claimed in a return. If it were possible for the taxpayer to file a return within the existing time limits showing his true liability for the period then there would be no need for recourse to special relief.
- 3.14 New paragraph 3A inserted by article 1(4) of these draft provisions begins by specifying that a claim for special relief may be made where a determination has been issued under section 28C TMA and the person believes some or all of the tax is not due or, if it has been paid, was not due.
- 3.15 It then makes it clear that special relief applies in cases in which relief would otherwise not be available because Case C applies or the 4 year time limit for making a claim has expired.
- 3.16 Case C prevents the Commissioners granting relief where the claimant
- could have sought relief within a time period that has now expired, and
 - knew, or ought reasonably to have known, before the end of that period that such relief was available.
- 3.17 All determinations clearly state that they can be displaced by filing a return for the relevant period, and the time limit that applies for filing such a return. So it is necessary to disapply Case C otherwise it would prevent anyone who has been sent a determination from qualifying for special relief.
- 3.18 The time limit has been disapplied as special relief is designed to be available to those who, for whatever reason, could not comply with the usual 4 year time limit for claiming overpayment relief.
- 3.19 New paragraph 3A(1)(c) further specifies that the claimant cannot have previously applied for special relief.

- 3.20 New paragraph 3A(2) provides that special relief can be claimed and the Commissioners can give effect to such a claim even if Case C applies to the taxpayer and the normal Schedule 1AB claim period of 4 years has expired.
- 3.21 New paragraph 3A(3) further states that the Commissioners do not have to give effect to any claim for special relief unless conditions A and B are met.
- 3.22 New paragraph 3A(4) spells out Condition A, relevant only to special relief, that it would be unconscionable for the Commissioners to recover the determined sum, or to withhold repayment of it. "Unconscionable" in this context is to take its ordinary meaning as set out in the Oxford English Dictionary, so "not right or reasonable", "unreasonably excessive".
- 3.23 New paragraph 3A(5) sets out Condition B, again relevant only to special relief, that the claimant's tax affairs are up to date, or arrangements are in place to the satisfaction of the Commissioners to bring them up to date as far as possible. This condition is a requirement under the current concession and is designed to enable relief to be granted in insolvency cases, where a taxpayer may not be able to bring all his tax affairs up to date, or cases where time to pay arrangements are in place.
- 3.24 New paragraph 3A(6) states that a claim for special relief must include, in addition to whatever information is required by Schedule 1A TMA, such information and supporting evidence necessary for the Commissioners to determine whether Conditions A and B are met. So the claimant has to explain why it is "unconscionable" for HMRC to collect, or not repay, the sum that is legally due for the relevant period as shown by the determination, as well as proving that he has filed all returns and paid all other sums due to HMRC for any tax, credit or benefit that it administers. Both of these conditions are part of the current concession.
- 3.25 As stated above, article 2 of the draft provisions inserts a new paragraph 51BA into Part 6 of Schedule 18 to the Finance Act 1998 for the purposes of determinations made under paragraphs 36 and 37 of that Schedule. These insertions cover the same ground for corporation tax as are set out above for income and capital gains tax, and Class 4 NICs.
- 3.26 Articles 4 and 5 of the draft legislation are respectively the transitional and commencement provisions designed to ensure that there is continuity of cover between the time when the concession is withdrawn and the new relief takes statutory effect. Together they ensure that if a claim has been made under the concession then the same person cannot make a claim for the same or any other period under the new statutory relief.

Schedule 1A TMA

- 3.27 If a claim meets the conditions set out for special relief then the mechanism for giving effect to the claim is set out in Schedule 1A TMA. This Schedule deals with procedural matters for claims made outside a return.
- 3.28 The main points to note are that the claim must be made to an officer of HMRC, in the form so required, and include a declaration to the effect that all particulars are correctly stated and to the best of the information and belief of the person making the claim. Where repayment is requested the claimant must provide evidence of payment.
- 3.29 Additionally this schedule provides that the claim may require a statement of the amount of tax to be discharged or repaid, and such information (including accounts, statements and documents relating to information in the claim) as is reasonably required to determine whether and to what extent the claim is correct.

3.30 This schedule also sets out the requirement to keep records and the provisions around amending a claim.

3.31 It also requires HMRC to give effect to a claim as soon as practicable after it is made by discharge or repayment of tax, and provides an officer of HMRC with the power to enquire into a claim or amendment. If an enquiry is opened into a claim and a closure notice is issued amending the amount of the claim, then this schedule also provides for an appeal right to the tribunal against such an amendment.

Chapter 4

How “special relief” will work

Introduction

4.1 A taxpayer who is out of time to file a return to replace HMRC’s determination of his tax liability for a period may claim “special relief” to recover overpaid income tax, capital gains tax, Class 4 NIC or corporation tax or to reduce an excessive HMRC determination. In this section, we provide details of how the relief afforded by the new paragraph 3A of Schedule 1AB will work. Cases dealt with under the new paragraph 51BA of Schedule 18 to the Finance Act 1998 will be treated in the same way.

4.2 This new relief is specifically linked to the recovery of overpaid tax rules included in Schedule 1AB TMA which are intended to

- give a single route for persons to recover overpayments or reduce excessive assessments,
- bring the claims process into line with self assessment claims, and
- align time limits with those for other claims.

4.3 The main differences between a claim for special relief and overpayment relief are that

- the four year time limit for making a claim is disapplied, and
- the person need not reasonably have known that relief was available and how to claim it (Case C set out at paragraph 2(4) of Schedule 1AB TMA is also disapplied).

4.4 The claim must be in writing and made to an officer of HMRC by the person who is due the relief. The claim must state

- that it is a claim for “special relief” under Schedule 1AB TMA,
- the tax year or accounting period for which relief is claimed,
- the amount of the claim and the amount of tax due for the relevant period,
- the reason why it would be “unconscionable” for HMRC to collect the sum legally due on the determination,
- that all the person’s obligations to HMRC are up to date, i.e. that all outstanding returns have been filed and all liabilities paid (or satisfactory arrangements are in place regarding payment)²,
- that relief of this nature has not been sought or granted previously, and
- that there is no other remedy available to the claimant to reduce the determined tax.

4.5 The claim must also include relevant evidence in support of it and include a declaration signed by the claimant stating that the particulars given in the claim are correct and complete to the best of their information and belief.

Unconscionable

4.6 This word has deliberately been carried forward from the concession to ensure continuity and that claimants are aware that this is a “relief of last resort” that will only be granted where HMRC are convinced that it would be wholly unreasonable to pursue the tax that is legally due.

4.7 HMRC has a duty to both Parliament and taxpayers generally to collect the tax due under relevant tax law and to ensure the tax system is operated fairly. This means that HMRC

² Paragraphs 4.19 to 4.21 below deal with how this condition will apply in insolvency cases.

cannot simply forego tax that is legally due on the grounds that it is unfair to enforce the tax. But it also means that we have to tell taxpayers what is due and how to adjust or dispute that sum.

4.8 In order to frame this relief we looked closely at the types of cases where relief has been granted under the concession, and set out here some examples where we might consider it “unconscionable” to pursue the determined sum. We recognise that this list is not exhaustive and that each claim will need to be looked at individually. More information may have to be obtained, where necessary, before a judgement is made, particularly where taxpayers appear to have ignored our communications.

4.9 We have previously granted relief from tax on income greater than was received to taxpayers who

- register as self-employed and never get any business but remain in the SA system;
- cease self employment, wind up their affairs (often incompletely or incorrectly) but move on without providing a forwarding address;
- are subcontractors suffering deductions under CIS and believe they have nothing further to pay, so do not respond to determinations and other contacts;
- are suffering from illness, including mental illness, and find it particularly difficult to engage with the tax system; and
- move abroad and fail to respond to our communications (or with whom we otherwise lose touch) and are now at the point of facing enforcement action for unpaid tax debts.

No other remedy available

4.10 This is another important consideration in granting special relief. The claimant must have no other option to reduce the determined sum before making a claim for this relief. There is no right of appeal against a determination, so that option is not available to taxpayers within the self assessment system who have their tax determined for a period. But what we mean generally by no other remedy being available is that the taxpayer must

- be out of time to file a return for the relevant period, and
- not have a “reasonable excuse” for not filing such a return.

4.11 Guidance on reasonable excuse is provided in the Compliance Handbook at [CH26340](#). Very briefly where a person has a reasonable excuse for not doing something and they put right the failure without unreasonable delay once the excuse ends, then they will not be treated as having failed to comply with their tax obligations. Reasonable excuse is not defined, and what is reasonable will differ from person to person depending on their particular circumstances. However, there are some excuses which are not normally accepted as reasonable and these are lack of money and relying on another person. What is ‘unreasonable delay’ depends upon the facts and circumstances of each case, see [CH26440](#). If the person does delay unreasonably then, whatever the reason for the failure or obstruction, they will not have a reasonable excuse.

Processing a claim

4.12 If a claim appears to meet the conditions set out in Schedule 1AB TMA then, subject to the provisions of Schedule 1A TMA, HMRC will give effect to the claim as soon as is practicable. The claim will be processed and the determined sum reduced to reflect the amended liability for the period. Normal payment and collection procedures will then apply to any revised sum shown as due for the period. If the tax adjustment creates an overpayment then we will look to set that off against any other liabilities before repaying any balance along with any repayment interest due.

4.13 If a claim is not valid because it is not in the right form or does not contain the required information, then it will be returned to the claimant with an explanation of why it cannot be

processed. The claimant can then correct any errors or omissions and resubmit the claim for the same period.

Enquiring into a claim

4.14 If the conditions for accessing relief appear to be met but HMRC require further information to check the claim, then an enquiry can be opened as set out in Schedule 1A TMA before granting relief. When HMRC are satisfied they have all the relevant facts relating the period under review and can reasonably determine the liability for the period, they will issue a closure notice reflecting their view, and amend the claim if needed.

Appeals

4.15 If the claimant disputes HMRC's view of the sum due for the period, then there is a right of appeal to the tax tribunal.

Discovery assessments

4.16 A claim for special relief may relate to a single or several tax years or accounting periods, and these periods must be stated in the claim. Tax liabilities and payments for other periods do not affect the amount of the relief for the claim periods.

4.17 However, if the grounds for the special relief claim also give grounds for believing that the person has paid less tax than was due for another year, we may make a discovery assessment to recover that amount.

Repayment

4.18 Where HMRC process and give effect to a claim for relief or after enquiry adjust the claim, any sums overpaid will be set off or repaid. Repayment will be made after taking into account any liability arising on other sources or in other years as a consequence of the claim.

Insolvency matters

4.19 This concession was originally intended for use in insolvency action where Inland Revenue claims based on estimated assessments for a tax period could prejudice returns to other creditors. This was at the time when Inland Revenue claims had preferential creditor status, which was finally removed in 2003.

4.20 But we recognise that many entities are now able to trade through insolvency or that individuals who have gone through such a process may remain in the tax system post-insolvency. Paragraph 3A(5) (and 51BA(5)) are designed to allow HMRC some latitude in dealing with taxpayers who are, or have been, subject to insolvency procedures in respect of the requirement that a claimant's obligations under the tax system must be up to date before special relief can be granted. We want those claimants involved in an insolvency procedure to provide us with all the necessary information to ensure we can finalise our claim in the insolvency (granting whatever special relief the evidence supports). We understand that such procedures can take time and that many taxpayers may have been issued with returns and incurred liabilities for later tax periods. So we also want these taxpayers to file any subsequent returns and pay any tax due, or put in place arrangements to pay, on time.

4.21 We recognise that a trustee in bankruptcy or in the event of company claims, a liquidator etc., cannot force a taxpayer to comply with his tax obligations for later tax periods, and do not want to deny relief for the period of administration because of the requirement on the taxpayer to bring his affairs up to date.

Single application

4.22 This relief is available once to enable taxpayers who have not been able to comply with their legal obligations to put matters right and bring their affairs up to date. But having needed to resort to this relief, it is expected thereafter that the taxpayer will know what his obligations are and will comply with them.

Guidance

4.23 Guidance for special relief along the lines set out here will be incorporated into that for overpayment relief in the Self Assessment Claims Manual and the COTAX Manual and will be available online at the time the legislation is enacted.

Annex: The Code of Practice on Consultation

About the consultation process

This consultation is being conducted in accordance with the Code of Practice on Consultation. If you wish to access the full version of the Code, you can obtain it online at:

<http://www.berr.gov.uk/files/file47158.pdf>

The consultation criteria

1. When to consult - Formal consultation should take place at a stage when there is scope to influence the policy outcome.
2. Duration of consultation exercises - Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. Clarity of scope and impact - Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. Accessibility of consultation exercise - Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. The burden of consultation - Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. Responsiveness of consultation exercises - Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. Capacity to consult - Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

If you feel that this consultation does not satisfy these criteria, or if you have any complaints or comments about the process, please contact:

Richard Bowyer, Consultation Coordinator, HMRC Better Regulation and Policy Team
020 7147 0062 or e-mail hmrc-consultation-co-ordinator@hmrc.gsi.gov.uk