Response from ICAS to the HMRC consultation

Extra-statutory concessions – technical consultations on draft legislation

ESC 3.20 VAT: Bad debt relief and insolvent businesses: revocation of clawback

16 December 2015
Extra-statutory concessions – technical consultation on draft legislation

About ICAS

1. The Institute of Chartered Accountants of Scotland (ICAS) is the oldest professional body of accountants. We represent around 20,000 members who advise and lead businesses. Around half our members are based in Scotland, the other half work in the rest of the UK and in almost 100 countries around the world. Nearly two thirds of our members work in business, whilst a third work in accountancy practices. ICAS members play leading roles in around 80% of FTSE 100 companies.

General comments on the proposals

2. ICAS welcomes the opportunity to give evidence to HMRC regarding the consultation on Extra-statutory concessions – technical consultation on draft legislation ESC 3.20 VAT: Bad debt relief and insolvent businesses: revocation of clawback, as requested in the consultation document issued on 4 November 2015. We have a number of comments to make on the draft legislation

Specific comments on the draft legislation

3. The draft legislation does not reflect the differences between English and Scots law. In section 26AA(2) reference is made to bankruptcy orders. The definition is not extended to include awards of sequestration which is the equivalent process under Scots law. The section also includes references to the annulment of bankruptcy which would be the equivalent of a recall of sequestration for Scots law. The section also does not mention trust deeds which could be terminated without the debtor being discharged of their debts where the English law equivalent is an individual voluntary arrangement coming to an end prematurely.

4. Section 26AA(8)(c) appears to omit a voluntary winding up order under the Insolvency (Northern Ireland) Order 1989.

5. It is not clear that Limited Liability Partnerships (LLPs) are fully covered by the legislation and we would suggest that it might be more effective to clarify the position in a similar way to the approach applied to partnerships in subsection (j) to (l) to ensure that LLP legislation in England and Wales, Scotland and Northern Ireland is covered.