

# EXECUTIVE COUNCIL

## CONFIDENTIAL

**Title of Report:** Business Successions – Extra Statutory Concession 18

**Paper No:** 271/12

**Date:** 21 November 2012

**Report of:** Taxation Officer/Commissioner of Tax

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### 1.0 Purpose

To introduce an Extra Statutory Concession to allow for the transfer of assets at written down value on the transfer of a business to a relative.

### 2.0 Recommendations

That Executive Council recommends the introduction of Extra Statutory Concession 18 from 1 December 2012.

### 3.0 Summary of Financial Implications

None

### 4.0 Background

**4.1** Whilst the Taxes Ordinance provides for Company Reconstructions, (section 62), there is no legislation for Individuals and Partnerships to allow them to transfer assets at their written down value.

**4.2** Currently the assets on a transfer of a business would need to be at market value and this amount would be included in the business accounts before the transfer, which may give rise to a balancing charge. However after the transfer, if the new owners have not paid for the assets, they cannot bring the assets into the business with any value.

**4.3** Therefore the previous owner may have to pay tax when they have not received any money and the new owners cannot claim any capital allowances in their accounts as they have not paid for the assets.

**4.4** In addition there is also the cost to the previous owner of establishing the market value and the cost to the Tax Office in verifying the market value.

## **5.0 The Proposed Introduction of ESC 18**

**5.1** It is proposed that an Extra Statutory Concession (ESC) is introduced to allow the assets of an individual or partnership in business to be transferred at written down value to the new owners, as long as they are a relative and continue in that business. The ESC is attached as Appendix A.

**5.2** The ESC is in line with the Islands Plan in supporting business development.

## **6.0 Financial Implications**

There will be a small reduction in income tax as there will be no tax due from the balancing charge on the assets being revalued to market value. However this will be compensated for by no costs being incurred by the Tax Office in verifying market value.

## **7.0 Legal Implications**

It is proposed that the Extra Statutory Concession be legislated when drafting priorities allow.

## **8.0 Human Resources Implications**

None

**EXTRA STATUTORY CONCESSION 18**

**BUSINESS SUCCESSIONS**

This ESC is to allow for the transfer of assets of an individual or partnership in business to be transferred at written down value (WDV) to the new owners.

Currently the assets on a transfer of a business would need to be at market value and this amount would be included in the business accounts before the transfer, which may give rise to a balancing charge. However after the transfer if the new owners have not paid for the assets they cannot bring the assets into the business with any value.

Example: a husband and wife own a farm and wish to transfer the business to their children on retirement at no cost. Currently the assets of the farm would be valued at market value and may give rise to a balancing charge in the accounts, which needs to be paid by the disposer who has not actually received any money to cover the charge. The children who continue in the business cannot bring the assets into the business as they have not paid for them and they also cannot claim any capital allowances.

The transfer of assets at their written down value will allow the smooth transfer of a business by those who wish to pass on their business to a relative. In addition it removes the problem of trying to establish market values when there has been no 3<sup>rd</sup> party sale, which would be at an additional cost to the disposer and to the Tax Office to verify the market value.

Conditions of transfer:

- The business must be transferred to a connected person(s) as defined by section 208 (2) of the Taxes Ordinance 1997.
- The connected person(s) must continue on in that trade.
- Section 62 of the Taxes Legislation which is currently only for Company Reconstructions will now apply for Individual and Partnership transfers of business.
- The trade must be carried on for 3 years after the transfer, unless the Commissioner states otherwise.
- In any other business transfers it will be at the Commissioner's discretion if the transfer at WDV will be allowed.

The previous owner(s) will not be able to claim writing down allowances in the final period as they have ceased trading. Under the Taxes Ordinance 1997 you must be carrying on a business to be able to claim allowances. The new owners will bring the assets in at the previous WDV as if they had always owned them.

It is hoped that this ESC, which is in line with the Islands Plan, will assist with the smooth transfer of a business between relatives, and as a result aid business development.

This ESC will be kept under review and may be withdrawn if it appears to be abused.