

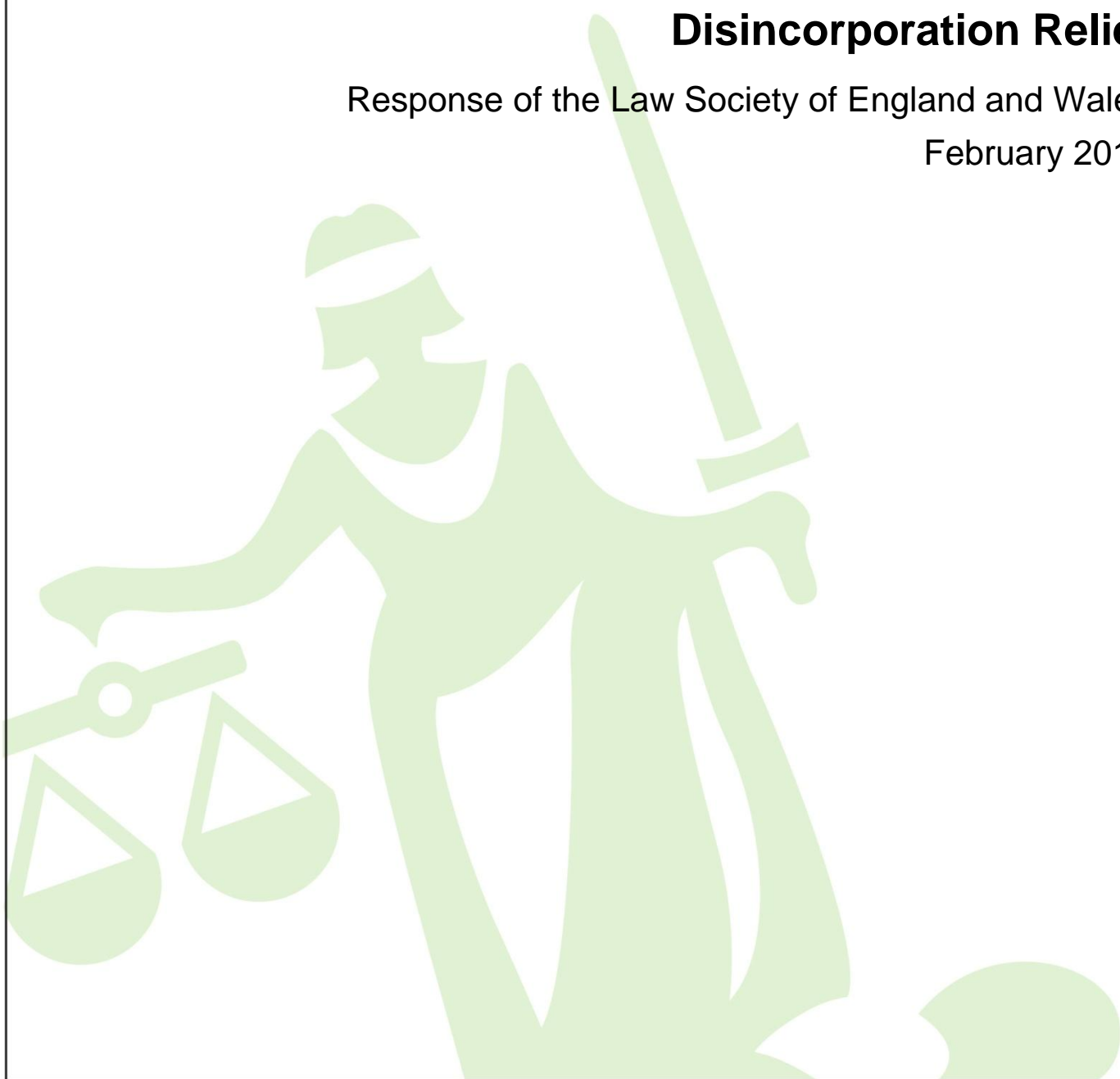


The Law Society

# **Disincorporation Relief**

Response of the Law Society of England and Wales

February 2013



# Disincorporation Relief

## Response of the Tax Law Committee of the Law Society

### Introduction

1. The Law Society is the representative body for over 145,000 solicitors in England and Wales. It negotiates on behalf of the profession, and lobbies regulators, Government and others. This response has been prepared on behalf of the Society by members of its Tax Law Committee, which is made up of senior and specialist lawyers practising in this field.
2. The Law Society welcomes this opportunity to comment on the draft legislation published on 11 December 2012 proposing a temporary relief for small companies that elect, jointly with their shareholders, to continue their business in an unincorporated form by transferring the business to one or more shareholders.

### General

3. We were pleased to find that a measure was to be included to enable disincorporation of small businesses. The Law Society has recommended such a measure, to defer the corporate tax charges that could otherwise arise, in order to allow businesses to adopt the correct structure from a legal and commercial perspective. However, we would like the relief to have been less restrictive in its scope, in a number of ways as described below. Without relaxation of these conditions, we are concerned that the extent of use of the relief will be pretty limited.

### Scope of Relief

4. We would note that the relief is only available if 5 separate conditions are satisfied. It is not clear to us why all of these conditions are required bearing in mind the policy objectives as we understand them. In particular:
  - requiring an aggregate market value of certain assets to not exceed £100,000 will remove many companies from the scope of the rules, particularly outside the service industries, notwithstanding that the £100,000 threshold is limited to goodwill and land and buildings;
  - requiring that all recipient shareholders are individuals (or individuals acting as members of partnerships) and thereby excluding relief where **any** recipient is a company or LLP (or individual acting as a member of an LLP) will again restrict the use of the relief; and
  - the legislation appears to be limited to single business companies. The relief would be of wider application if it permitted a tax-neutral division of businesses between shareholders. Similarly, allowing existing shareholders to receive cash or other non core assets in a capital form would enhance the flexibility of the relief.

5. Further, we would make the following representations as regards the draft legislation:
- since the objective is a tax neutral transaction with the shareholders stepping into the shoes of the company, a transfer (for the company and the shareholders' CGT position) at s.38 allowable expenditure would be more logical than the lower of that amount and current market value; and
  - notwithstanding the contrary arguments put forward by HM Treasury in the Response to the Consultation on a Disincorporation Relief, published on 11 December 2012, we believe the relief will be much less frequently used if it does not extend to tax charges on the shareholders as well as tax charges on the company.
6. Overall, we were pleased that the Government has decided to introduce a disincorporation relief. However, we believe the conditions proposed will be too restrictive for the relief to be widely utilised, and as a consequence a valuable opportunity may be missed.

### **Questions**

If you have any questions on this representation and response, please contact Simon Skinner of the Corporation Tax Sub-Committee, on 020 7295 3242 or at [simon.skinner@traverssmith.com](mailto:simon.skinner@traverssmith.com).