STATUTORY INSTRUMENTS

2017 No. 495

CAPITAL GAINS TAX
INHERITANCE TAX
VALUE ADDED TAX

The Enactment of Extra-Statutory Concessions Order 2017

Made - - - -	*28th March 2017*
Coming into force - -	*6th April 2017*

The Treasury make the following Order in exercise of the powers conferred by section 160 of the Finance Act 2008(**1**).

In accordance with section 160(7) of that Act, a draft of this instrument was laid before the House of Commons and approved by resolution of that House.

Citation and commencement

1. This Order may be cited as the Enactment of Extra-Statutory Concessions Order 2017 and comes into force on 6th April 2017.

Transitional provisions for woodlands subject to a deferred estate duty charge

2. At the end of paragraph 46 of Schedule 19 to the Finance Act 1986(**2**) insert "to the extent that the value transferred is attributable to the land concerned".

3. The amendment made by article 2 has effect in relation to transfers of value made on or after the date on which this Order comes into force.

Non-resident or dual resident settlements: meaning of "participator"

4. In section 96(**3**) of the Taxation of Chargeable Gains Act 1992 (payments by and to companies), in subsection (10) after paragraph (a) insert—

(**1**) 2008 c. 9.
(**2**) 1986 c. 41.
(**3**) Section 96 of the Taxation of Chargeable Gains Act 1992 (c. 12) derived from section 82A of the Finance Act 1981 (c. 35). Section 82A was inserted in the Finance Act 1981 by section 91 of, and paragraph 4 of Schedule 18 to, the Finance Act 1991 (c. 31) and was later repealed and re-enacted as section 96 of the Taxation of Chargeable Gains Act 1992 by sections 289 and 290 of, and Schedule 12 to, that Act.

"(aa) a person is not to be regarded as a participator in a company controlled by the trustees of a settlement where the person has a share or interest in the capital or income of the company solely by virtue of an interest which the person has under the settlement;".

5.—(1) Schedule 5(**4**) to the Taxation of Chargeable Gains Act 1992 is amended as follows.

(2) In paragraph 2A (settlements created before 17th March 1998) after sub-paragraph (9) insert —

"(9A) For the purposes of sub-paragraphs (8) and (9) above a person is not to be regarded as a participator in a company controlled by the trustees of a settlement where the person has a share or interest in the capital or income of the company solely by virtue of an interest which the person has under the settlement.".

(3) In paragraph 8 (meaning of "originating") after sub-paragraph (8) insert—

"(8A) But a person is not to be regarded as a participator in a company controlled by the trustees of a settlement where the person has a share or interest in the capital or income of the company solely because of an interest which the person has under the settlement.".

(4) In paragraph 9 (qualifying settlements, and commencement) after sub-paragraph (10) insert—

"(10ZA) For the purposes of sub-paragraphs (9) and (10) above a person is not to be regarded as a participator in a company controlled by the trustees of a settlement where the person has a share or interest in the capital or income of the company solely by virtue of an interest which the person has under the settlement.".

6. The amendments made by articles 4 and 5 have effect—

(a) for corporation tax purposes, for accounting periods ending on or after the date on which this Order comes into force, and

(b) for capital gains tax purposes, for the tax year 2017-18 and subsequent tax years.

Disapplication of disallowance of input tax in insolvency where consideration not paid

7.—(1) Part 1 of the Value Added Tax Act 1994(**5**) is amended as follows.

(2) After subsection (1) of section 26A (disallowance of input tax where consideration not paid) insert—

"(1A) Subsection (1) is subject to section 26AA (disapplication of disallowance under section 26A in insolvency).".

(3) After section 26A insert—

"**Disapplication of disallowance under section 26A in insolvency**

26AA.—(1) Section 26A(1) does not apply to a person in relation to credit for input tax which relates to a supply where—

(a) at the time of the supply, no insolvency procedure had effect in relation to the person,

(**4**) Paragraph 2A of Schedule 5 was inserted by section 131 of, and paragraph 2 of Schedule 22 to, the Finance Act 1998 (c. 36). Sub-paragraph (10) of paragraph 2A was amended by section 1177 of, and paragraphs 225 and 266(1) and (3)(c) of Schedule 1 to, the Corporation Tax Act 2010 (c. 4). Other relevant amendments have been made to sub-paragraph (9) of paragraph 8 of Schedule 5 which was amended by section 1177 of, and paragraphs 225 and 266(1) and (4)(b) of Schedule 1 to, the Corporation Tax Act 2010 and sub-paragraph (11) of paragraph 9 of Schedule 5 which was amended by section 131 of, and paragraph 4 of Schedule 22 to, the Finance Act 1998 and section 1177 of, and paragraphs 225 and 266(1) and (5)(c) of Schedule 1 to, the Corporation Tax Act 2010.

(**5**) 1994 c. 23; section 26A was inserted by section 22(1) and (3) of the Finance Act 2002 (c. 23).

(b) at any time during the relevant period, an insolvency procedure had effect in relation to that person ("the insolvent person"), and

(c) the Commissioners have been notified in writing of the matter mentioned in paragraph (b) by or on behalf of a person authorised to deal with the insolvent person's affairs.

(2) But where the insolvency procedure mentioned in subsection (1)(b) is a bankruptcy order, award of sequestration, protected trust deed or voluntary arrangement and that bankruptcy order is annulled, that award of sequestration is recalled or that protected trust deed or voluntary arrangement has come to an end prematurely—

(a) the disapplication of section 26A(1) by subsection (1) above ceases to have effect, and

(b) the person to which the bankruptcy order, award of sequestration, protected trust deed or voluntary arrangement relates is to be taken for the purposes of section 26A(1) as not being entitled to the credit for the input tax concerned as from whichever is the later of—

(i) the end of the relevant period, and

(ii) the date on which the bankruptcy order was annulled, the award of sequestration recalled or the protected trust deed or voluntary arrangement has come to an end prematurely.

(3) Where the person mentioned in section 26A(1) is entitled as a member of a partnership to credit for input tax this section has effect as if—

(a) the references in subsections (1)(a) and (b) to "the person" and "that person" were references to the partnership,

(b) the reference in subsection (1)(c) to "the insolvent person's affairs" were a reference to the insolvent partnership's affairs, and

(c) the reference in subsection (2)(b) to "the person", in connection with a bankruptcy order or a voluntary arrangement, were a reference to the person who is a member of the partnership to which the bankruptcy order or voluntary arrangement relates.

(4) Subsection (1) does not apply where the insolvency procedure referred to in subsection (1)(b) has effect as part of, or as a consequence of, arrangements where the main purpose, or one of the main purposes, of those arrangements is to obtain a tax advantage by the operation of this section.

(5) Regulations may make such supplementary, incidental, consequential or transitional provisions as appear to the Commissioners to be necessary or expedient for the purposes of this section.

(6) For the purposes of this section "the relevant period", in relation to a supply, is the period beginning immediately after the supply took place and ending six months after—

(a) the date of that supply, or

(b) if later, the date on which the relevant part of the consideration for the supply is payable.

(7) For the purposes of subsection (6) the relevant part of the consideration is the part of the consideration referable to the credit for input tax which would (ignoring the effect of this section) be disallowed under section 26A(1).

(8) For the purposes of this section an insolvency procedure has effect in relation to a person at a time when any of the following apply—

(a) a bankruptcy order has been made under Chapter 1 of Part 9 of the Insolvency Act 1986(**6**) in relation to that person and has not been annulled,

(b) a warrant has been granted for a petition for sequestration to be served on that person which has resulted in the sequestration of that person's estate or an award of sequestration has been made on an application by that person, in both cases under section 22 of the Bankruptcy (Scotland) Act 2016(**7**), and in either case the award of sequestration has not been recalled,

(c) a bankruptcy order has been made under Chapter 1 of Part 9 of the Insolvency (Northern Ireland) Order 1989(**8**) in relation to that person and has not been annulled,

(d) where that person is a company registered under the Companies Act 2006(**9**) in England and Wales or Scotland or an unregistered company as defined in section 220 of the Insolvency Act 1986 which is deemed to be registered in England and Wales or Scotland under section 221 of that Act, a petition has been presented to the court which has resulted in a winding-up order being made under Chapter 6 of Part 4 or Part 5 of the Insolvency Act 1986 in relation to that person and that person has not been dissolved or that winding-up order has not been stayed or sisted,

(e) where that person is a company registered under the Companies Act 2006 in Northern Ireland, or an unregistered company as defined in article 184 of the Insolvency (Northern Ireland) Order 1989 which is deemed to be registered in Northern Ireland under article 185 of that Order, a petition has been presented to the court which has resulted in a winding-up order being made under Part 5 or Part 6 of the Insolvency (Northern Ireland) Order 1989 and that person has not been dissolved or that winding-up order has not been stayed,

(f) that person is in administration for the purposes of Schedule B1 to the Insolvency Act 1986(**10**) or Schedule B1 to the Insolvency (Northern Ireland) Order 1989,

(g) an appointment of an administrative receiver is in force in relation to that person disregarding any temporary vacancy in the office of receiver,

(h) an appointment of a liquidator is in force as a consequence of a creditors' voluntary winding up under Chapter 4 of Part 4 of the Insolvency Act 1986 or Chapter 4 of Part 5 of the Insolvency (Northern Ireland) Order 1989 in relation to that person disregarding any temporary vacancy in the office of liquidator,

(i) a voluntary arrangement has been approved in accordance with Part 1 or Part 8 of the Insolvency Act 1986 or Part 2 or Chapter 2 of Part 8 of the Insolvency (Northern Ireland) Order 1989 in relation to that person and that voluntary arrangement has not come to an end prematurely,

(j) a county court administration order has been made under Part 6 of the County Courts Act 1984(**11**) or Part 6 of the Judgments Enforcement (Northern Ireland) Order 1981(**12**) in relation to that person and has not ceased to take effect,

(**6**) 1986 c. 45.
(**7**) 2016 asp 21.
(**8**) S.I. 1989/2405 (N.I .19); relevant amending instruments are S.I. 2002/3152 (N.I. 6) and 2005/1455 (N.I. 10) (which, amongst other things, inserted Schedule B1 into the 1989 Order); S.R. 2002 No. 334, 2004 No. 307, 2006 No. 61, 2006 No. 370 and 2006 No. 377; S.I. 2007/2194, 2008/948 and 2009/1941.
(**9**) 2006 c. 46.
(**10**) 1986 c. 45; Schedule B1 was inserted by Schedule 16 to the Enterprise Act 2002 (c. 40) and amended by paragraph 299 of Schedule 8 to the Courts Act 2003 (c. 39) and article 2 of S.I. 2003/2096.
(**11**) 1984 c. 28; section 112 (included in Part 6 of the Act) was amended by section 220 of the Insolvency Act 1985 (c. 65), paragraph 2 of Schedule 2 to the Civil Procedure Act 1997 (c. 12) and paragraph 10 of Schedule 9 to the Crime and Courts Act 2013 (c. 22).
(**12**) S.I. 1981/226 (N.I. 6).