Draft Order laid before the House of Commons under section 160(7) of the Finance Act 2008 for approval by resolution of that House.

DRAFT STATUTORY INSTRUMENTS

2012 No. 000

CORPORATION TAX
INCOME TAX
INSURANCE PREMIUM TAX

The Enactment of Extra-Statutory Concessions Order 2012

Made - - - -	*****
Coming into force - -	*1st March 2012*

The Treasury make the following Order in exercise of the power 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 a resolution of that House.

Citation and commencement

1. This Order may be cited as the Enactment of Extra-Statutory Concessions Order 2012 and comes into force on 1st March 2012.

De minimis exemption: insurance premium tax

2.—(1) Part 3 of the Finance Act 1994(**2**) (insurance premium tax) is amended as follows.

(2) In section 50(3)(**3**) (chargeable amount), for "section 69" substitute "sections 69 and 69A".

(3) In section 59(1)(**4**) (appeals), after paragraph (h) insert—

"(ha) a refusal of an application for an exemption under section 69C or the withdrawal of such an exemption;".

(4) In section 69(**5**) (charge to tax where different rates apply), after subsection (1) insert—

(**1**) 2008 c. 9.
(**2**) 1994 c. 9.
(**3**) Section 50(3) was amended by section 23(2) of the Finance Act 1997 (c. 16).
(**4**) Section 59(1) was amended by paragraph 5 of Schedule 5 to the Finance Act 1995 (c. 4), section 27(6) of the Finance Act 1997 and paragraph 205 of Schedule 1 to S.I. 2009/56.
(**5**) Section 69 was substituted by section 23(1) of the Finance Act 1997.

"(1A) But this section does not apply for the purpose of determining the chargeable amount in relation to an excepted premium (as to which see section 69A)."

(5) After section 69 (charge to tax where different rates apply) insert—

"**Part-exempt contracts: excepted premiums**

69A.—(1) Where—

(a) an insurer at any time ("the relevant time") receives a premium under a part-exempt contract, and

(b) the conditions in subsection (2) are met,

the chargeable amount in relation to the premium is nil.

(2) The conditions are that—

(a) the relevant total is £500,000 or less, and

(b) 10% or less of the relevant total is attributable to any non-exempt matter or matters.

(3) For this purpose "the relevant total" is the total of—

(a) the amount of the premium,

(b) the amount of any other premium received by the insurer under the contract at or before the relevant time, and

(c) the amount of any premium that, at the relevant time, the insurer has a present or future right to receive under the contract.

(4) In applying subsection (2)(b), any amount that is included in a premium as being referable to tax (whether or not the amount corresponds to the actual amount of tax payable in respect of the premium) shall be taken to be wholly attributable to a non-exempt matter.

(5) Subject to that, any attribution under subsection (2)(b) is to be made on such basis as is just and reasonable.

(6) For the purposes of this section—

(a) an "exempt matter" is any matter such that, if it were the only matter for which the contract provided cover, the contract would not be a taxable insurance contract, and

(b) a "non-exempt matter" is a matter which is not an exempt matter.

(7) In this Part—

"excepted premium" means a premium under an insurance contract in relation to which, by virtue of subsection (1), the chargeable amount is nil;

"part-exempt contract" means an insurance contract that provides–

(a) cover for one or more exempt matters, and

(b) cover for one or more non-exempt matters.

Treatment of excepted premiums where limits breached after receipt

69B.—(1) This section applies if—

(a) an insurer at any time—

(i) receives a premium under a part-exempt contract that is not an excepted premium, or

(ii) acquires a present or future right to receive a premium under a part-exempt contract that, on receipt, will not be an excepted premium,

(b) one or more excepted premiums were previously received by the insurer under the contract, and

(c) this section has not already applied in relation to the contract.

(2) The insurer is deemed for the purposes of this Part to have received, at the time mentioned in subsection (1)(a), premiums under the contract of the same amounts, and attributable to the same matters, as the excepted premiums mentioned in subsection (1)(b).

Part-exempt contracts: exemption from requirement to make returns

69C.—(1) If the condition in subsection (2) is met, a registrable person may apply in writing to the Commissioners for an exemption under this section.

(2) The condition is that the person has not received, and does not expect to receive, at any time after the beginning of a specified accounting period, any premium under a taxable insurance contract that is not an excepted premium.

(3) In subsection (2) "specified" means specified in the application.

(4) The application must contain such information as the Commissioners may direct.

(5) The Commissioners must grant the application unless it appears to them that the condition in subsection (2) is not met.

(6) Where an exemption has effect the applicant—

(a) is exempt from any requirement imposed under section 54 to make returns in relation to the accounting period specified in the application or subsequent accounting periods, and

(b) must ensure that any records that the applicant is required to keep by virtue of paragraph 1(1) of Schedule 7 are, so far as they relate to premiums received, kept in a form enabling records relating to excepted premiums to be readily distinguished from records relating to other premiums.

Withdrawal of exemption

69D.—(1) The Commissioners may by notice withdraw an exemption if it appears to them that—

(a) the condition in section 69C(2) is no longer met, or

(b) the person is not keeping, or has not kept, records as required by section 69C(6)(b).

(2) Where an exemption is withdrawn under subsection (1), the exemption ceases to have effect in relation to the accounting period in which the notice is given and subsequent accounting periods.

(3) If, during an accounting period in relation to which an exemption has effect, a person receives a premium under a taxable insurance contract that is not an excepted premium, the exemption ceases to have effect in relation to that and subsequent accounting periods.

(4) References in this section to an exemption are to an exemption granted under section 69C."

(6) In section 73(1)(**6**) (interpretation), at the appropriate places, insert—

""excepted premium" has the meaning given by section 69A(7) above;", and

""part-exempt contract" has the meaning given by section 69A(7) above;".

(**6**) Section 73 has been amended but none of those amendments are relevant.

Reduction of cash equivalent where car is shared: income tax

3.—(1) The Income Tax (Earnings and Pensions) Act 2003(**7**) is amended as follows.

(2) In section 121(**8**) (method of calculating the cash equivalent of the benefit of a car) for subsection (3) substitute—

"(3) Where the car is shared the cash equivalent is calculated under this section in accordance with section 148."

(3) In section 148 (reduction of cash equivalent where car is shared)—

(a) in subsection (2) omit paragraph (b) and the "and" before it,

(b) after that subsection, insert—

"(2A) The provisional sum calculated under step 7 in section 121(1) is to be reduced on a just and reasonable basis before making any deduction under step 8.", and

(c) in subsection (3) for "(2)(b)" substitute "(2A)".

Sale of memorials and niches by crematoria: income tax

4.—(1) Chapter 11 of Part 2 of the Income Tax (Trading and Other Income) Act 2005(**9**) (trade profits: other specific trades) is amended as follows.

(2) For the heading immediately preceding section 169 substitute "*Cemeteries and crematoria: interests in land*".

(3) In subsection (3) of section 170(**10**) (deduction for capital expenditure)—

(a) omit "or" at the end of paragraph (a), and

(b) at the end of paragraph (b) insert—

"or

(c) under both subsection (2)(b) above and section 172ZB(4), 172ZC(4) or 172ZD(3).

(4) After section 172 insert—

"Crematoria: niches, memorials and inscriptions

Niches, memorials and inscriptions: introduction

172ZA.—(1) Sections 172ZB to 172ZE apply in calculating the profits of a trade which consists of or includes—

(a) the carrying on of a crematorium, and

(b) in connection with carrying on the crematorium—

(i) the sale of niches or memorials, or

(ii) the making of inscriptions.

(2) In those sections—

(a) "the trade" is the trade mentioned in subsection (1),

(b) "the trader" is the person carrying on the trade, and

(**7**) 2003 c. 1
(**8**) Section 121 was amended by section 54(3) and paragraph 2 of Schedule 28 to the Finance Act 2009 (c. 10).
(**9**) 2005 c. 5.
(**10**) Section 170(3) was amended by paragraph 603 of Schedule 1 to the Corporation Tax Act 2009 (c. 4).

(c) a "predecessor" is a person who carried on the trade at any time before the trader started doing so.

Allowable deductions: niches

172ZB.—(1) This section sets out the deductions that are allowed in respect of a niche if proceeds from the sale of the niche are brought into account as a receipt in calculating the profits of the trade.

(2) A deduction is allowed for two-thirds of the costs incurred (by the trader or a predecessor) in the formation of the niche.

(3) Formation of the lining and of any tablet associated with the niche is taken to be part of the formation of the niche.

(4) If the niche is in a building that is used wholly or mainly for the purpose of providing niches, a further deduction is allowed for two-thirds of the associated building costs.

(5) In relation to a niche in a building—

(a) "the associated building costs" is the relevant proportion of the costs of the building, and

(b) "the relevant proportion" is the proportion that the area occupied by the niche bears to the area of the building as a whole or, if the proportion cannot reasonably be calculated on that basis, such proportion as may be calculated on a just and reasonable basis.

Allowable deductions: memorials

172ZC.—(1) This section sets out the deductions that are allowed in respect of a memorial if proceeds from the sale of the memorial are brought into account as a receipt in calculating the profits of the trade.

(2) A deduction is allowed for the costs incurred (by the trader or a predecessor) in producing the memorial.

(3) If the memorial includes an inscription, making that inscription is taken to be part of producing the memorial.

(4) If the memorial is attached to a building that is used wholly or mainly for the purpose of accommodating memorials or the memorial comprises an entire building, a further deduction is allowed for two-thirds of the associated building costs.

(5) In relation to a memorial attached to or comprising a building, "the associated building costs" means—

(a) the amount found by dividing the costs of the building by the total number of memorials that the building is capable of accommodating, or

(b) if the memorial comprises an entire building, the costs of that building.

Allowable deductions: inscriptions

172ZD.—(1) This section sets out the deductions that are allowed in respect of an inscription if proceeds from making the inscription are brought into account in calculating the profits of the trade.

(2) A deduction is allowed for the costs incurred (by the trader or a predecessor) in making the inscription.

(3) If the inscription is made on an existing framework designed to hold more than one inscription, a further deduction is allowed for two-thirds of the associated framework costs.