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

DRAFT STATUTORY INSTRUMENTS

2009 No.

INCOME TAX
CAPITAL GAINS TAX
INHERITANCE TAX
PETROLEUM REVENUE TAX
EXCISE
VALUE ADDED TAX

The Enactment of Extra-Statutory Concessions Order 2009

Made - - - -	*2009*
Coming into force - -	*6th April 2009*

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 a resolution of that House.

Citation and commencement

1.—(1) This Order may be cited as the Enactment of Extra-Statutory Concessions Order 2009 and shall come into force on 6th April 2009.

(2) Articles 2 to 17 have effect in accordance with the provisions of those articles.

The Income Tax (Earnings and Pensions) Act 2003

Certain benefits provided under old schemes not taxed

2.—(1) In the Income Tax (Earnings and Pensions) Act 2003(**2**), after section 395 insert—

(**1**) 2008 c. 9.
(**2**) 2003 c. 1.

"**Benefits under old section 222 schemes not taxed by virtue of section 394**

395A. Section 394 does not apply to a benefit provided under an employer–financed retirement benefits scheme if—

(a) immediately before 6th April 1980 the scheme was approved under section 222 of ICTA 1970(**3**),

(b) the scheme was not approved under Chapter II of Part II of FA 1970(**4**),

(c) no material changes have been made to the terms on which benefits are provided under the scheme after 5th April 1980, and

(d) no contributions have been paid under the scheme after that date.".

(2) The amendment made by this article has effect for the tax year 2009-10 and subsequent tax years.

The Income Tax (Trading and Other Income) Act 2005

Subsistence expenses

3.—(1) In the Income Tax (Trading and Other Income) Act 2005(**5**), after section 57 insert—

"Subsistence expenses

Expenses incurred by traders on food and drink

57A.—(1) In calculating the profits of a trade, a deduction is allowed for any reasonable expenses incurred on food or drink for consumption by the trader at a place to which the trader travels in the course of carrying on the trade, or while travelling to a place in the course of carrying on the trade, if conditions A and B are met.

(2) Condition A is met if—

(a) a deduction is allowed for the expenses incurred by the trader in travelling to the place, or

(b) where the expenses of travelling to the place are not incurred by the trader, a deduction would be allowed for them if they were.

(3) Condition B is met if—

(a) at the time the expenses are incurred on the food or drink, the trade is by its nature itinerant, or

(b) the trader does not travel to the place more than occasionally in the course of carrying on the trade and either—

(i) the travel in connection with which the expenses are incurred on the food or drink is undertaken otherwise than as part of the trader's normal pattern of travel in the course of carrying on the trade, or

(ii) the trader does not have such a normal pattern of travel.".

(2) The amendment made by this article has effect for the tax year 2009-10 and subsequent tax years.

(**3**) 1970 c. 10. Chapter II of Part IX (section 222 to section 225 inclusive) repealed with effect from 6th April 1980 by section 69 of, and Schedule 14 Part 1 to, the Finance Act 1971 (c.. 24).
(**4**) 1970 c. 24. Repealed by section 844(4) of, and Schedule 31 to, the Income and Corporation Taxes Act 1988 (c. 1).
(**5**) 2005 c. 5.

The Taxation of Chargeable Gains Act 1992

Disposals where assets lost or destroyed, or become of negligible value

4.—(1) Section 24 of the Taxation of Chargeable Gains Act 1992 (disposals where assets lost or destroyed, or become of negligible value)(**6**) is amended as follows.

(2) After subsection (1) insert—

"(1A) A negligible value claim may be made by the owner of an asset ("P") if condition A or B is met.

(1B) Condition A is that the asset has become of negligible value while owned by P.

(1C) Condition B is that—

(a) the disposal by which P acquired the asset was a no gain/no loss disposal,

(b) at the time of that disposal the asset was of negligible value, and

(c) between the time when the asset became of negligible value and the disposal by which P acquired it, each other disposal (if any) of the asset was a no gain/no loss disposal.".

(3) In subsection (2), for "Where the owner of an asset which has become of negligible value makes a claim to that effect:" substitute "Where a negligible value claim is made:".

(4) In subsection (3)—

(a) for "subsections (1) and (2) above" substitute "this section";

(b) for "where either of those subsections applies in accordance with this subsection," substitute "where a building or structure is so regarded,".

(5) After subsection (3) insert—

"(4) For the purposes of subsection (1C), a no gain/no loss disposal is one which, by virtue of any of the no gain/no loss provisions, neither a gain nor a loss accrues to the person making the disposal.".

(6) The amendments made by this article have effect on and after 6th April 2009 (and it does not matter whether the conditions for making a negligible value claim were met before or after that date).

Shares in close company transferring assets at an undervalue

5.—(1) Section 125 of the Taxation of Chargeable Gains Act 1992 (shares in close company transferring assets at an undervalue) is amended as follows.

(2) For subsection (4) substitute—

"(4) This section does not apply in the following cases.

Case 1

Case 1 is where the transfer of the asset is a disposal to which section 171(1) applies (transfers within a group: general provisions).

Case 2

Case 2 is where the transferee is a participator, or an associate of a participator, in the company and an amount equal to the undervalue amount is treated as—

(a) a distribution within section 209(2)(b) or (4) of the Taxes Act (meaning of "distribution")(**7**), or

(**6**) 1992 c. 12; section 24(2) was substituted by paragraph 4 of Schedule 39 to the Finance Act 1996 (c. 8).
(**7**) The "Taxes Act" is defined by section 288(1) of the Taxation of Chargeable Gains Act 1992 as the Income and Corporation Taxes Act 1988.

(b) a capital distribution within section 122 of this Act (distribution which is not a new holding within Chapter 2)(**8**).

Case 3

Case 3 is where the transferee is an employee of the company and—

(a) an amount equal to the undervalue amount is treated as the employee's employment income, and

(b) no part of that amount is treated as exempt income.".

(3) After subsection (5) insert—

"(6) In this section—

"associate" has the meaning given by section 417 of the Taxes Act;

"employee" has the meaning given by section 4 of ITEPA 2003(**9**) (as read with section 5(2) of that Act);

"employment income" has the meaning given by section 7(2) of ITEPA 2003;

"exempt income" has the meaning given by section 8 of ITEPA 2003;

"participator" has the meaning given by section 417 of the Taxes Act;

"undervalue amount" means the amount by which the amount or value of the consideration for the transfer is less than the market value of the asset transferred.".

(4) The amendments made by this article have effect for the purposes of computing the gain accruing on any disposal of shares in a close company on or after 6th April 2009.

Roll-over relief: activities other than trades

6.—(1) Section 158 of the Taxation of Chargeable Gains Act 1992 (roll-over relief: activities other than trades and interpretation) is amended as follows.

(2) In subsection (1), after "only if they are used by the body," insert—

"and

(f) in relation to the activities of a company owned by such an unincorporated association or other body ("the parent body"), but in the case of any assets within head A of class 1 only if they are both occupied and used by the parent body, and in the case of any other assets only if they are used by the parent body,".

(3) After subsection (1) insert—

"(1A) For the purposes of subsection (1)(f) the parent body owns the company if—

(a) it holds not less than 90% of the company's ordinary share capital,

(b) it is beneficially entitled to not less than 90% of the profits available for distribution to the equity holders of the company, and

(c) it would be beneficially entitled on a winding up to not less than 90% of the assets of the company available for distribution to equity holders.

(1B) For the purposes of subsection (1A)—

(**8**) Section 122 was amended by paragraph 52 of Schedule 20 and Part 5(10) of Schedule 41 to the Finance Act 1994 (c. 9).
(**9**) "ITEPA 2003" is defined by section 288(1) of the Taxation of Chargeable Gains Act 1992 as the Income Tax (Earnings and Pensions) Act 2003.

(a) "ordinary share capital" has the meaning given by section 832(1) of the Taxes Act(**10**) and also includes, in relation to a company that has no share capital, any interests in the company possessed by members of the company, and

(b) the meaning of "equity holder" and method of determination of profits or assets available for distribution shall be that prescribed for the purposes of paragraph 8 of Schedule 7AC by sub-paragraphs (2) and (3) of that paragraph.".

(4) The amendments made by this article have effect in relation to disposals on or after 6th April 2009.

Period of absence due to work of spouse or civil partner

7.—(1) Section 223(3) of the Taxation of Chargeable Gains Act 1992 (private residences: amount of relief) is amended as follows.

(2) In paragraph (b), after "United Kingdom" insert "or lived with a spouse or civil partner who worked in such an employment or office".

(3) In paragraph (c), at the end insert "and in addition,".

(4) After paragraph (c) insert—

"(d) any period of absence not exceeding 4 years (or periods of absence which together did not exceed 4 years) throughout which the individual lived with a spouse or civil partner in respect of whom paragraph (c) applied in respect of that period (or periods),".

(5) The amendments made by this article have effect in relation to disposals on or after 6th April 2009.

Resumption of residence after period of absence due to work

8.—(1) Section 223 of the Taxation of Chargeable Gains Act 1992 (private residences: amount of relief) is amended as follows.

(2) In subsection (3), in the words after paragraph (d) (inserted by article 7 of this Order), for the words from "if both before and after the period" to the end substitute "if conditions A and B are met.".

(3) After subsection (3) insert—

"(3A) Condition A is that before the period there was a time when the dwelling-house was the individual's only or main residence.

(3B) Condition B is that after the period—

(a) in a case falling within paragraph (a), (b), (c) or (d) of subsection (3), there was a time when the dwelling-house was the individual's only or main residence,

(b) in a case falling within paragraph (b), (c) or (d) of that subsection, the individual was prevented from resuming residence in the dwelling-house in consequence of the situation of the individual's place of work or a condition imposed by the terms of the individual's employment requiring the individual to reside elsewhere, being a condition reasonably imposed to secure the effective performance by the employee of his duties, or

(c) in a case falling within paragraph (b), (c) or (d) of that subsection, the individual lived with a spouse or civil partner to whom paragraph (b) of this subsection applied.".

(**10**) The "Taxes Act" is defined by section 288(1) of the Taxation of Chargeable Gains Act 1992 as the Income and Corporation Taxes Act 1988.