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
CORPORATION TAX
CAPITAL GAINS TAX

The Enactment of Extra-Statutory Concessions (No. 2) Order 2009

Made - - - -	***
Coming into force - -	*1st April 2010*

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. This Order may be cited as the Enactment of Extra-Statutory Concessions (No. 2) Order 2009 and shall come into force on 1st April 2010.

Accommodation outgoings of ministers of religion

2.—(1) The Income Tax (Earnings and Pensions) Act 2003(**2**) is amended as follows.

(2) In step 1 in section 218(1)(**3**) (calculation of earnings rate for a tax year), after "exempt income", insert ", other than any attributable to section 290A or 290B (accommodation outgoings of ministers of religion)."

(3) After section 290 insert—

(**1**) 2008 c. 9
(**2**) 2003 c. 1.
(**3**) Step 1 in section 218(1) was amended by paragraph 5 of Schedule 3 to the Finance Act 2007 (c. 11).

"**Accommodation outgoings of ministers of religion**

290A.—(1) No liability to income tax arises in respect of a person in lower-paid employment as a minister of a religious denomination by virtue of the payment or reimbursement of accommodation outgoings.

(2) Subsection (1) does not apply if the minister is paid an allowance intended to be used, wholly or in part, for paying accommodation outgoings (as to which see section 290B).

(3) In this section—

"accommodation outgoings" means amounts incurred by the minister in—

(a) heating, lighting or cleaning qualifying premises; or

(b) maintaining a garden forming part of qualifying premises;

"lower-paid employment" has the meaning given by section 217;

"qualifying premises" has the same meaning as in section 290(**4**).

Allowances paid to ministers of religion in respect of accommodation outgoings

290B.—(1) This section applies where a person in lower-paid employment as a minister of a religious denomination is paid an allowance intended to be used, wholly or in part, for paying accommodation outgoings.

(2) No liability to tax arises by virtue of the payment of the allowance to the extent that it is used for paying accommodation outgoings.

(3) In this section—

"accommodation outgoings" and "lower-paid employment" have the same meanings as in section 290A;

"qualifying premises" has the same meaning as in section 290.".

(4) The amendments made by this article have effect for the tax year 2010-2011 and subsequent tax years.

Discretionary payments by trustees: employment income

3.—(1) Chapter 7 of Part 9 of the Income Tax Act 2007(**5**) (settlements and trustees: discretionary payments) is amended as follows.

(2) Before section 493 (discretionary payments by trustees) insert—

"Payments constituting income of beneficiary (other than employment income)".

(3) After section 496 insert—

"Payments constituting employment income of beneficiary

Discretionary payments by trustees: employment income

496A.—(1) Section 496B applies if—

(a) in a tax year the trustees of a settlement make a discretionary employment income payment, and

(b) the trustees are UK resident for the tax year.

(**4**) Section 290(4) specifies the premises that are qualifying premises.
(**5**) 2007 c. 3. There have been no relevant amendments to Part 9.

(2) In this section and section 496B, "discretionary employment income payment" means a payment to a person ("the beneficiary") that—

(a) is made in the exercise of a discretion (whether exercisable by the trustees or any other person),

(b) is made out of income, and

(c) meets conditions A and B.

(3) Condition A is that what is paid to the beneficiary—

(a) is, only because of the payment, employment income of the beneficiary, but

(b) is not exempt income (as defined in section 8 of ITEPA 2003(**6**)).

(4) Condition B is that the payment is made at a time when the settlement is an employee benefit settlement.

(5) A settlement is an employee benefit settlement if the trusts on which the settled property is held do not permit the settled property to be applied otherwise than—

(a) for the benefit of persons of one or more relevant classes, or

(b) for the benefit of such persons and for charitable purposes.

(6) "Relevant class" means a class defined by reference to one or more of the following—

(a) employment in a particular trade or profession,

(b) employment by, or holding office with, a body carrying on a trade, profession or undertaking, or

(c) marriage to or civil partnership with, or relationship to, or dependence on, persons of a class mentioned in paragraph (a) or (b).

(7) Where the trusts on which the settled property is held do not permit the settled property to be applied otherwise than as described in subsection (5) during a period (however defined), the settlement is an employee benefit settlement during (and only during) that period.

Relief for trustees

496B.—(1) The trustees of a settlement are entitled (on making a claim in respect of a tax year) to repayment of an amount of income tax equal to the lesser of amount A and amount B.

(2) Amount A is—

$$TEI \times TR$$

where—

TEI is the total of the amounts that are employment income of beneficiaries of the settlement because of discretionary employment income payments made in the tax year by the trustees, and

TR is the trust rate in force for the tax year.

(3) Amount B is the amount of the trustees' tax pool available for the tax year (see section 497) reduced (but not so that is goes below nil) by the total amount of income tax (if any) treated under section 494 as having been paid as a result of payments made by the trustees in the tax year.

(4) A claim under this section may not be made before the end of the tax year to which it relates.".

(**6**) Section 1017 of the Income Tax Act 2007 (c. 3) defines "ITEPA 2003" as meaning the Income Tax (Employment and Pensions) Act 2003 (c. 1).

(4) Before section 497 (calculation of trustees' tax pool) insert—

"Tax pool".

(5) In section 497(1) (calculation of trustees' tax pool), in Step 1—

(a) after "nil)" insert—

"(a)",
and

(b) insert at the end—

", and

(b) the amount to which the trustees are entitled under section 496B in respect of the previous tax year.".

(6) In section 504(5)(**7**) (treatment of income of unauthorised unit trust), for "and 495" substitute ", 495 and 496B".

(7) The amendments made by paragraphs (3) and (4) have effect in relation to payments made by trustees on or after 6th April 2010.

(8) The amendment made by paragraph (5) has effect for the tax year 2011-12 and subsequent tax years.

(9) The other amendments made by this article have effect for the tax year 2010-11 and subsequent tax years.

(10) Where the trustees of an employee benefit settlement (as defined in section 496A of the Income Tax Act 2007) agree, or have agreed, that the trustees' tax pool available for the tax year 2009-10 or a preceding tax year should be reduced by an amount, that tax pool is to be, or to continue to be, reduced by that amount (even though that reduction is not mentioned in Step 1 of section 497(1) of the Income Tax Act 2007).

Discretionary payments by trustees: other provisions

4.—(1) In section 824(3) of the Income and Corporation Taxes Act 1988(**8**) (repayment supplements: individuals and others)—

(a) after paragraph (ab) insert—

"(ac) if the repayment is a repayment as a result of a claim under section 496B of ITA 2007(**9**) (relief for payments by discretionary trust taxable as employment income), the relevant time is the 31 January next following the end of the tax year to which the claim relates;", and

(b) in paragraph (a)(ii), insert at the end "(other than a repayment within paragraph (ac))".

(2) In Part 2 of Schedule 54 to the Finance Act 2009(**10**) (repayment interest: special provision as to repayment interest start date), after paragraph 9 insert—
"Tax on payments out of discretionary trust taxable as employment income

(**7**) There have been amendments to section 504, but none are relevant here.
(**8**) 1988 c. 1. Section 824(3) has been amended by section 196 of and Schedule 19 (paragraph 41(2)) to the Finance Act 1994 (c. 9), section 92 of the Finance Act 1997 (c. 16), section 41 of the Finance Act 1999 (c. 16), and section 90 of the Finance Act 2001 (c. 9).
(**9**) Section 831 of the Income and Corporation Taxes Act 1988 (c. 1) defines "ITA 2007" as meaning the Income Tax Act 2007.
(**10**) 2009 c. 10. Sections 101 to 104 of, and Schedules 53 and 54 to, the Finance Act 2009 contain a new regime for the payment of interest, including interest on sums to be paid by Her Majesty's Revenue and Customs. The new regime will come into force on such day or days as the Treasury may by order appoint (section 104(3)). The new regime will replace existing provisions about interest, including section 824 of the Income and Corporation Taxes Act 1988 (c. 1). Schedule 54 includes a restatement of provisions of that section, which is expected to be repealed by order (section 104(5) and (6)).

9A. In the case of a repayment made in consequence of a claim under section 496B of ITA 2007(**11**) (relief for payments by discretionary trust taxable as employment income) the repayment interest start date is 31 January next following the end of the tax year to which the claim relates.".

(3) The amendments made by this article have effect for the tax year 2010-11 and subsequent tax years.

Estimated Gift Aid donations by companies

5.—(1) In the Income and Corporation Taxes Act 1988(**12**), after section 339(3B) insert—

"(3BA) In a case where a company makes a payment to a charity ("the donation"), and the charity makes a payment to the company ("the repayment"), then for the purposes of subsection (3B)(a) the donation is not made subject to a condition as to repayment if—

(a) the company is wholly owned by the charity, or by a number of charities that include the charity;

(b) the donation is of an amount which the company estimates to be the amount necessary to reduce to nil the company's total profits for the accounting period in which the donation is made ("the relevant period");

(c) the only purpose for which the charity makes the repayment is to adjust the amount of the donation so that it is of the amount actually necessary to reduce to nil the company's total profits for the relevant period; and

(d) the repayment is made no later than 12 months after the end of the relevant period.

(3BB) If subsection (3BA) applies—

(a) the repayment is not non-charitable expenditure for the purposes of section 505(4)(**13**) or section 543(1)(f) of ITA 2007; and

(b) paragraphs 56 and 62 (but not 64) of Schedule 18 to the Finance Act 1998(**14**) (supplementary claims or elections) apply to the repayment.".

(2) The amendment made by paragraph (1) has effect in relation to payments to charities made on or after 1st April 2010.

Income of contemplative communities or of their members

6.—(1) In the Income and Corporation Taxes Act 1988, after section 508 insert—

"**Contemplative religious communities: profits exempt from corporation tax**

508A.—(1) Subsection (2) applies in a case where members of a qualifying contemplative religious community transfer all their income and assets, or covenant all their income, to the community ("the independent community") (and for this purpose it is irrelevant whether or not the community is part of an order or religious institution).

(2) As respects each chargeable period of the independent community, and each person who is a qualifying member of the independent community at any time in that period, the independent community shall be treated for the purposes of corporation tax as if an amount of its profits for the chargeable period equal to the relevant amount (see subsections (5) to (7)) were income of the qualifying member.

(**11**) Section 126 of the Finance Act 2009 (c. 10) defines "ITA 2007" as meaning the Income Taxes Act 2007.
(**12**) 1988 c. 1; section 339(3B) was inserted by section 26 of the Finance Act 1990 (c. 29) and amended by section 40 of the Finance Act 2000 (c. 17), section 58 of the Finance Act 2006 (c. 25) and section 60 of the Finance Act 2007 (c. 11).
(**13**) Section 505(4) was amended by section 55 of the Finance Act 2006 (c. 25) and section 1027 of the Income Tax Act 2007 (c. 3).
(**14**) 1998 c. 36.