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DRAFT STATUTORY INSTRUMENTS

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**2012 No.**

**The Enactment of Extra-Statutory Concessions Order 2012**

**Groups of companies arrangements: corporation tax**

**13.**—(1) In the Corporation Tax Act 2010(1), after section 155 (arrangements for transfer of company owned by consortium etc) insert—

**“155A Certain arrangements not within sections 154 and 155**

(1) Arrangements entered into by a joint venture company which, apart from this section, would be arrangements within section 154(3) or 155(3) are not to be treated as such arrangements if and so long as—

- (a) the arrangements fall within subsection (2), and
- (b) none of the contingencies mentioned in subsection (3) to which the arrangements relate has occurred.

(2) Arrangements fall within this subsection if they are—

- (a) an agreement which provides for the transfer of shares or securities in the joint venture company to one or more members of that company on, or as a result of, one or more contingencies mentioned in subsection (3) occurring, or
- (b) a provision in a constitutional document of the joint venture company which provides for the suspension of a member’s voting rights on, or as a result of, one or more of those contingencies occurring.

(3) The contingencies referred to in subsections (1)(b) and (2) are—

- (a) the voluntary departure of a member,
- (b) the commencement of the liquidation, administration, administrative receivership or receivership of, or the entering into of a voluntary arrangement by, a member under the Insolvency Act 1986(2) or the Insolvency (Northern Ireland) Order 1989(3) or the commencement, or entering into, of equivalent proceedings or arrangements under the law of any country or territory outside the United Kingdom,
- (c) a serious deterioration in the financial condition of a member,
- (d) a change of control of a member,
- (e) a default by a member in performing its obligations under any agreement between the members or with the joint venture company (which, for this purpose, includes any constitutional document of the joint venture company),
- (f) an external change in the commercial circumstances in which the joint venture company operates such that its viability is threatened,
- (g) an unresolved disagreement between members, and

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(1) 2010 c. 4.

(2) 1986 c. 45.

(3) S.I. 1989/2405 (N.I. 19).

(h) any contingency of a similar kind to that mentioned in any of paragraphs (a) to (g) which is provided for, but not intended to happen, when the arrangements in question are entered into.

(4) This section does not apply if a member could alone or together with connected persons dictate the terms or timing of—

- (a) the transfer of shares or securities, or
- (b) the suspension of a member's voting rights,

in advance of one or more of the contingencies occurring.

(5) For the purposes of subsection (4) members are not connected with each other by reason only of their membership of the joint venture company.

(6) In this section—

“connected” has the same meaning as in section 1122;

“constitutional document” means a memorandum of association, articles of association or any other similar document regulating the affairs of the joint venture company;

“joint venture company” means a company which—

- (a) has two or more member companies, and
- (b) carries on a commercial activity governed by an agreement regulating the affairs of its members;

“member” means a holder of shares or securities in the joint venture company.

### **155B Certain mortgage arrangements not within sections 154 and 155**

(1) Arrangements entered into by a company which, apart from this section, would be arrangements within section 154(3) or 155(3) are not to be treated as such arrangements if and so long as—

- (a) the arrangements are a mortgage, secured by way of shares or securities in the company, which on default or the happening of any other event allows the mortgagee to exercise its rights against the mortgagor, and
- (b) the mortgagee has not exercised its rights against the mortgagor.

(2) This section does not apply if the mortgagee—

- (a) possesses greater rights in respect of the shares or securities which are the subject of the mortgage than it requires to protect its interest as mortgagee, or
- (b) could alone or together with connected persons dictate the terms or timing of the default or the happening of any other event which allows it to exercise its rights against the mortgagor.

(3) For the purposes of subsection (2)(b) the mortgagee is not, by reason only of the mortgage, connected with a company whose shares or securities are the subject of the mortgage.

(4) In this section—

“connected” has the same meaning as in section 1122;

“mortgage” means—

- (a) in England and Wales, and Northern Ireland, any legal or equitable charge, and
- (b) in Scotland, any right in security,

(and section 1166(1) (definition of “mortgage”: Scotland) does not apply).”

(2) In section 154 of that Act (arrangements for transfer of member of group of companies etc), in subsection (3), after “the following effects” insert “(but see sections 154A and 155B)”.

(3) In section 155 of that Act (arrangements for transfer of company owned by consortium etc), in subsection (3), after “the following effects” insert “(but see sections 154A and 155B)”.

(4) In section 156 of that Act (sections 154 and 154: supplementary), in subsection (1) for “and 155” substitute “to 155B”.