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STATUTORY INSTRUMENTS

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**2009 No. 730**

**The Enactment of Extra-Statutory Concessions Order 2009**

*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)<sup>(1)</sup> 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*

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(1) 1992 c. 12; section 24(2) was substituted by paragraph 4 of Schedule 39 to the Finance Act 1996 (c. 8).

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”)(2), or
- (b) a capital distribution within section 122 of this Act (distribution which is not a new holding within Chapter 2)(3).

*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(4) (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,

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(2) 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.

(3) Section 122 was amended by paragraph 52 of Schedule 20 and Part 5(10) of Schedule 41 to the Finance Act 1996 (c. 8).

(4) “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.

- (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)—
- (a) “ordinary share capital” has the meaning given by section 832(1) of the Taxes Act<sup>(5)</sup> 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,

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(5) 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.

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.”.

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

### **Disposals of private residence in connection with divorce, etc**

9.—(1) After section 225A of the Taxation of Chargeable Gains Act 1992 (private residence held by personal representatives)(6) insert—

#### **“Disposals in connection with divorce, etc**

**225B.**—(1) Where an individual—

- (a) ceases to live with his spouse or civil partner in a dwelling-house or part of a dwelling-house which is their only or main residence, and
- (b) subsequently disposes of, or of an interest in, the dwelling-house or part to the spouse or civil partner,

then, if conditions A to C are met, sections 222 to 224 shall apply as if the dwelling-house or part continued to be the individual’s only or main residence until the disposal.

(2) Condition A is that the disposal mentioned in subsection (1)(b) is pursuant to—

- (a) an agreement between the individual and his spouse or civil partner made in contemplation of or otherwise in connection with the dissolution or annulment of the marriage or civil partnership, their judicial separation or the making of a separation order in respect of them, or their separation in other circumstances such that the separation is likely to be permanent, or
- (b) an order of a court—
  - (i) made on granting an order or a decree of divorce or nullity of marriage, for the dissolution or annulment of the civil partnership, or for judicial separation,
  - (ii) made in connection with the dissolution or annulment of the marriage or civil partnership or the parties’ judicial separation and which is made at any time after the granting of such an order or decree,
  - (iii) made at any time under section 22A, 23, 23A, 24 or 24A of the Matrimonial Causes Act 1973(7),
  - (iv) made at any time under article 25 or 26 of the Matrimonial Causes (Northern Ireland) Order 1978(8),

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(6) Section 225A was inserted by paragraph 5 of Schedule 22 to the Finance Act 2004 c. 12.

(7) 1973 c. 18. Section 23 was amended by section 16 to the Administration of Justice Act 1982 (c. 53). Section 24 was amended by paragraph 3 of Schedule 3 to the Welfare Reform and Pensions Act 1999 (c. 30). Section 24A was inserted by section 7 of the Matrimonial Homes and Property Act 1981 (c. 24) and amended by paragraph 11 of Schedule 1 to the Matrimonial and Family Proceedings Act 1984 (c. 42) and Schedule 27 to the Civil Partnership Act 2004 (c. 33). Sections 22A and 23A will be inserted, sections 23 and 24 will be substituted and section 24A will be amended by paragraphs 3 to 6 of Schedule 2, paragraph 7 of Schedule 8 and Schedule 10 to, the Family Law Act 1996 (c. 27) on a day to be appointed.

(8) S.I. 1978/1045 (N.I. 15). Article 25 was amended by article 5 of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989 (S.I. 1989/677 (N.I. 4)). Article 26 was amended by paragraph 4 of Schedule 3 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)).

- (v) made under section 8 of the Family Law (Scotland) Act 1985<sup>(9)</sup>, including incidental orders made by virtue of section 14 of that Act, or
- (vi) made at any time under any provision of Schedule 5 to the [Civil Partnership Act 2004](#)<sup>(10)</sup> that corresponds to any of the provisions mentioned in paragraphs (iii) and (iv).

(3) Condition B is that in the period between the individual ceasing to reside in the dwelling-house or part of the dwelling-house and the disposal to the spouse or civil partner, the dwelling-house or part continues to be the only or main residence of the spouse or civil partner.

(4) Condition C is that the individual has not given notice under section 222(5) that another dwelling-house or part of a dwelling-house is to be treated as the individual's main residence for any part of that period.

(5) Section 223 (as applied by this section) shall apply only on the making of a claim by the individual.”.

(2) The amendment made by this article has effect in relation to disposals on or after 6th April 2009.

#### **Sale of private residence under certain agreements with employer, etc**

**10.**—(1) After section 225B of the Taxation of Chargeable Gains Act 1992 (inserted by article 9 of this Order) insert—

##### **“Sale of private residence under certain agreements with employer, etc**

**225C.**—(1) This section applies where—

- (a) an individual disposes of, or of an interest in, a dwelling-house or a part of a dwelling-house which is the individual's only or main residence (“the initial disposal”),
- (b) the individual does so as a consequence of a change to the situation of the individual's place of work or that of a co-owner of the dwelling-house or the interest, being a change that is required by the employer of the individual or the co-owner, and
- (c) the initial disposal is under a home purchase agreement.

(2) If—

- (a) under the terms of the agreement the individual receives, within three years of the initial disposal, a share of any profit made by the purchaser upon the purchaser's disposal of, or of an interest in, the dwelling-house or part of the dwelling-house, and
- (b) the receipt of that sum would be treated (apart from this section) as a disposal falling within section 22 (disposal where capital sums derived from assets),

that receipt shall be treated for the purposes of this Act as a gain attributable to the initial disposal but accruing to the individual at the time the sum is received.

(3) In this section—

“home purchase agreement” means an agreement—

- (a) made with the employer or a person operating under an agreement with the employer (“the purchaser”),

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(9) 1985 c. 37. Section 8 was amended by section 74 of, and paragraph 34 of Schedule 8 to, the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40), section 20 of, and paragraph 6 of Part 1 of Schedule 12 to, the Welfare Reform and Pensions Act 1999 (c. 30) and section 167 of the Pensions Act 1995 (c. 26).

(10) 2004 c. 33.

(b) which includes a term entitling the individual to receive a share of any such profit as is mentioned in subsection (2)(a);

“co-owner”, in relation to any individual (“A”), means another individual who holds an interest jointly or in common with A, whether or not the interests of the co-owners are equal.”.

(2) The amendment made by this article has effect in relation to disposals on or after 6th April 2009.

### **Employee trusts**

**11.**—(1) The Taxation of Chargeable Gains Act 1992(**11**) is amended as follows.

(2) For the heading of section 239 substitute “Disposals to trustees of employee trusts”.

(3) After section 239 insert—

#### **“Relief for disposals by trustees of employee trusts**

**239ZA.**—(1) Any gain accruing to trustees on the disposal of an asset comprised in the settled property of an employee trust shall not be a chargeable gain where the disposal is—

- (a) a disposal to a beneficiary, or
- (b) a deemed disposal under section 71(1),

if the conditions in subsection (2) are satisfied.

(2) The conditions are that—

- (a) an amount that is equal to or exceeds the market value of the asset is chargeable to income tax as employment income within the meaning of section 7 of ITEPA 2003(**12**) (meaning of “employment income” etc);
- (b) neither the beneficiary nor (if different) the person who is liable for the income tax is an excluded person;
- (c) no actual consideration (as opposed to consideration deemed to be given by any enactment relating to the taxation of chargeable gains) is given directly or indirectly to the trustees for the asset; and
- (d) Schedule 7D(**13**) does not to any extent prevent the gain being a chargeable gain.

(3) The following are excluded persons—

- (a) a participator in a company, shares in or securities of which are comprised in the settled property;
- (b) a participator in a close company that has provided any property that has become comprised in the settled property;
- (c) a person who was a participator in a company within paragraph (a) or (b) at any time during the 10 years before the shares, securities or other property concerned became comprised in the settled property;
- (d) a person connected with a person within any of paragraphs (a) to (c).

(4) For the purposes of subsection (3)—

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(11) 1992 c. 12.

(12) Section 288(1) of the Taxation of Chargeable Gains Act 1992 defines “ITEPA 2003” as meaning the Income Tax (Earnings and Pensions) Act 2003 (c. 1); the definition was inserted by paragraph 219 of Schedule 6 to that Act.

(13) Schedule 7D was inserted by paragraph 221 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003.

- (a) “participator” has the same meaning as in section 239 and shall, in the case of a company which is not a close company, be construed as a person who would be a participator in the company if it were a close company, but
- (b) a person is not a participator unless either—
  - (i) that person is entitled to, or entitled to rights enabling the acquisition of, 5% or more of the share capital of the company or any class of shares in the company, or
  - (ii) that person would be entitled to 5% or more of the company’s assets on winding-up.

(5) In determining whether a person is connected with another for the purposes of this section, section 286 shall apply as if subsection (8) of that section also mentioned uncle, aunt, nephew and niece.

(6) In this section—

“beneficiary” means a person within paragraph (a) or (b) of section 86(1) of the Inheritance Tax Act 1984 (trusts for benefit of employees);

“close company” includes a company which, if resident in the United Kingdom, would be a close company as defined in section 288;

“employee trust” means a settlement of property to which section 86 of the Inheritance Tax Act 1984 applies or would apply but for subsection (3) of that section;

“market value” means the market value for the purposes of capital gains tax (as to which see section 272).”.

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

### **Works of art etc.**

**12.**—(1) In subsection (2) of section 258 of the Taxation of Chargeable Gains Act 1992 (works of art etc)(**14**)—

- (a) for the words from “with respect to which” to “has been given” substitute “which is property which has been or could be designated under section 31 of the Inheritance Tax Act 1984 (“the 1984 Act”) (designation and undertakings)(**15**)”;
- (b) in paragraph (a), for the words “the Inheritance Tax Act 1984 (“the 1984 Act”)” substitute “the 1984 Act”;
- (c) in paragraph (b), omit the words from “or in accordance with” to “Finance Act 1946”.

(2) The amendment made by this article has effect in relation to disposals on or after 6th April 2009.

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(14) 1992 c. 12; section 258(2) has been amended by section 143(7) of the Finance Act 1998 (c. 36).

(15) 1984 c. 51; section 31 has been amended by paragraph 2(2), (3) and (4) of Schedule 26 to the Finance Act 1985 (c. 54), paragraph 8 of Schedule 19 to the Finance Act 1986 (c. 41), paragraph 8(1) and (2) of Schedule 10 to the Taxation of Chargeable Gains Act 1992 and paragraphs 4, 5 and 6 of Schedule 25 to the Finance Act 1998.