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STATUTORY INSTRUMENTS

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**2012 No. 266**

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

**Sale of memorials and niches by crematoria: corporation tax**

5.—(1) Chapter 9 of Part 3 of the Corporation Tax Act 2009(1) (trade profits: other specific trades) is amended as follows.

(2) For the heading immediately preceding section 146 substitute “*Cemeteries and crematoria: interests in land*”.

(3) In subsection (3) of section 147 (deduction for capital expenditure)—

(a) omit “or” at the end of paragraph (a),

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

“or

(c) under both subsection (2)(b) above and section 149B(4), 149C(4) or 149D(3).”

(4) After section 149 insert—

*“Crematoria: niches, memorials and inscriptions*

**149A Niches, memorials and inscriptions: introduction**

(1) Sections 149B to 149E 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 company carrying on the trade, and

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

**149B Allowable deductions: niches**

(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.

#### **149C Allowable deductions: memorials**

(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.

#### **149D Allowable deductions: inscriptions**

(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.

(4) In relation to an inscription made on an existing framework, “the associated framework costs”—

(a) is the amount found by dividing the costs of the framework by the total number of inscriptions that the framework is designed to hold, and

(b) includes, if the framework is attached to a building that is used wholly or mainly for the purpose of accommodating memorials, the amount found by dividing the costs of the building by the total number of memorials that the building is capable of accommodating.

(5) This section does not apply to an inscription if it is made as part of producing a memorial (see section 149C).

#### **149E Costs of the building**

(1) For the purposes of sections 149B to 149D, the costs of a building are to be determined in accordance with this section.

(2) If the building was acquired for the purposes of the trade, the costs of the building are the lower of—

- (a) the market value of the building when it was acquired, and
- (b) the costs incurred in acquiring the building.

(3) If the building was constructed for the purposes of the trade, the costs of the building are the costs incurred in constructing the building.

(4) In either case—

- (a) the acquisition cost (or market value) of the land on which the building is situated is to be ignored, and
- (b) for these purposes, costs (or values) are to be apportioned between the land and the building on a just and reasonable basis.

(5) Any construction costs incurred with respect to the building after it was acquired or constructed for the purposes of the trade must be brought into account as costs of the building.

(6) But costs incurred in maintaining the building must not be brought into account.

(7) Costs must not be included as costs of the building if a deduction is or is to be brought into account for them under section 147(2) (deduction for capital expenditure).

(8) A reference in this section to costs incurred is to costs incurred either by the trader or a predecessor.

(9) In sections 149B to 149D and this section, “building” includes any other type of structure.”

(5) The amendments made by this article have effect in relation to niches and memorials sold, and inscriptions made, after the date on which this Order comes into force.