
DRAFT STATUTORY INSTRUMENTS

2009 No.

The Enactment of Extra-Statutory Concessions Order 2009

The Taxation of Chargeable Gains Act 1992

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

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(3) (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;

(1) 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.

(2) Section 122 was amended by paragraph 52 of Schedule 20 and Part 5(10) of Schedule 41 to the Finance Act 1994 (c. 9).

(3) “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.

“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.