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DRAFT STATUTORY INSTRUMENTS

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**2009 No.**

**INCOME TAX**

**CAPITAL GAINS TAX**

**INHERITANCE TAX**

**PETROLEUM REVENUE TAX**

**EXCISE**

**VALUE ADDED TAX**

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

*Made* - - - - 2009  
*Coming into force* - - 6th April 2009

The Treasury make the following Order in exercise of the powers conferred by section 160 of the Finance Act 2008(a).

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.—(1) This Order may be cited as the Enactment of Extra-Statutory Concessions Order 2009 and shall come into force on 6th April 2009.

(2) Articles 2 to 17 have effect in accordance with the provisions of those articles.

*The Income Tax (Earnings and Pensions) Act 2003*

**Certain benefits provided under old schemes not taxed**

2.—(1) In the Income Tax (Earnings and Pensions) Act 2003(b), after section 395 insert—

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(a) 2008 c. 9.  
(b) 2003 c. 1.

### **“395A Benefits under old section 222 schemes not taxed by virtue of section 394**

Section 394 does not apply to a benefit provided under an employer–financed retirement benefits scheme if—

- (a) immediately before 6th April 1980 the scheme was approved under section 222 of ICTA 1970(a),
- (b) the scheme was not approved under Chapter II of Part II of FA 1970(b),
- (c) no material changes have been made to the terms on which benefits are provided under the scheme after 5th April 1980, and
- (d) no contributions have been paid under the scheme after that date.”.

(2) The amendment made by this article has effect for the tax year 2009-10 and subsequent tax years.

*The Income Tax (Trading and Other Income) Act 2005*

### **Subsistence expenses**

3.—(1) In the Income Tax (Trading and Other Income) Act 2005(c), after section 57 insert—

*“Subsistence expenses*

#### **57A Expenses incurred by traders on food and drink**

(1) In calculating the profits of a trade, a deduction is allowed for any reasonable expenses incurred on food or drink for consumption by the trader at a place to which the trader travels in the course of carrying on the trade, or while travelling to a place in the course of carrying on the trade, if conditions A and B are met.

(2) Condition A is met if—

- (a) a deduction is allowed for the expenses incurred by the trader in travelling to the place, or
- (b) where the expenses of travelling to the place are not incurred by the trader, a deduction would be allowed for them if they were.

(3) Condition B is met if—

- (a) at the time the expenses are incurred on the food or drink, the trade is by its nature itinerant, or
- (b) the trader does not travel to the place more than occasionally in the course of carrying on the trade and either—
  - (i) the travel in connection with which the expenses are incurred on the food or drink is undertaken otherwise than as part of the trader’s normal pattern of travel in the course of carrying on the trade, or
  - (ii) the trader does not have such a normal pattern of travel.”.

(2) The amendment made by this article has effect for the tax year 2009-10 and subsequent tax years.

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(a) 1970 c. 10. Chapter II of Part IX (section 222 to section 225 inclusive) repealed with effect from 6th April 1980 by section 69 of, and Schedule 14 Part 1 to, the Finance Act 1971 (c. 24).  
(b) 1970 c. 24. Repealed by section 844(4) of, and Schedule 31 to, the Income and Corporation Taxes Act 1988 (c. 1).  
(c) 2005 c. 5.

**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)(a) 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*

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”)(b), or

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

(b) 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.

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

#### 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(b) (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,
- (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(c) 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

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

- (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, 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)(a) insert—

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

**“225B Disposals in connection with divorce, etc**

(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(a),
  - (iv) made at any time under article 25 or 26 of the Matrimonial Causes (Northern Ireland) Order 1978(b),
  - (v) made under section 8 of the Family Law (Scotland) Act 1985(c), 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(d) 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.

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(a) 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.

(b) 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)).

(c) 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).

(d) 2004 c. 33.

## **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—

### **“225C Sale of private residence under certain agreements with employer, etc**

(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”),
- (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(a) is amended as follows.

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

(3) After section 239 insert—

### **“239ZA Relief for disposals by trustees of employee trusts**

(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.

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(a) 1992 c. 12.

- (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<sup>(a)</sup> (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<sup>(b)</sup> 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)—
- (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.

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(a) 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.

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



## Works of art etc.

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

- (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)(b)”;
- (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.

### *The Inheritance Tax Act 1984*

## Foreign-owned works of art

13.—(1) The Inheritance Tax Act 1984(c) is amended as follows.

(2) In section 5(1)(b) (property excluded from estate immediately before death)(d), insert at the end “or a foreign-owned work of art which is situated in the United Kingdom for one or more of the purposes of public display, cleaning and restoration (and for no other purpose).”.

(3) In section 64 (charge at ten-year anniversary), the existing text becomes subsection (1) of that section; and after that subsection insert—

“(2) For the purposes of subsection (1) above, a foreign-owned work of art which is situated in the United Kingdom for one or more of the purposes of public display, cleaning and restoration (and for no other purpose) is not to be regarded as relevant property.”.

(4) In section 272 (general interpretation), insert at the appropriate places—

““foreign-owned”, in relation to property, means property in the case of which the person beneficially entitled to it is domiciled outside the United Kingdom or, if the property is comprised in a settlement, in the case of which the settlor was domiciled outside the United Kingdom when the property became comprised in the settlement;”,  
and

““public display” means display to which the public are admitted, on payment or not, but does not include display with a view to sale;”.

(5) The amendments made by this article have effect in relation to deaths and ten-year anniversaries occurring on or after 6th April 2009.

## Decorations and awards

14.—(1) In section 6 of the Inheritance Tax Act 1984 (excluded property)(e), after subsection (1A) insert—

“(1B) A decoration or other award is excluded property if—

- (a) it was awarded for valour or gallant conduct, and
- (b) it has never been the subject of a disposition for a consideration in money or money’s worth.

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

(b) 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.

(c) 1984 c. 51.

(d) Section 5(1)(b) was amended by paragraph 10 of Schedule 20 to the Finance Act 2006 (c. 25).

(e) Section 6 was amended by section 186(2) of the Finance Act 2003 (c. 14).

(1C) In subsection (1B) the reference to a disposition of the decoration or other award includes—

- (a) a reference to a disposition of part of it, and
- (b) a reference to a disposition of an interest in it (or in part of it).”.

(2) The amendment made by this article has effect in relation to transfers of value or other events occurring on or after 6th April 2009.

*The Oil Taxation Act 1975*

**Oil allowance**

**15.**—(1) Section 8(4) of the Oil Taxation Act 1975(a) (oil allowance) is amended as follows.

(2) For paragraphs (a) and (b) substitute—

“(a) to the extent that his share of that oil allowance does not exceed his share of the oil (other than gas) won and saved from the field in the period, as if—

- (i) in computing the gross profit or gross loss accruing to him in the period all amounts relating to gas fell to be disregarded, and
- (ii) in the definition of C, for “the oil won and saved” there were substituted “the oil (other than gas) won and saved”; and

(b) to the extent, if any, that his share of that oil allowance exceeds his share of the oil (other than gas) so won and saved, as if—

- (i) in computing the gross profit or gross loss so accruing all amounts relating to oil other than gas fell to be disregarded, and
- (ii) in the definition of C, for “the oil won and saved” there were substituted “the gas won and saved”.”.

(3) The amendments made by this article have effect in relation to chargeable periods ending on or after 6th April 2009.

*The Alcoholic Liquor Duties Act 1979*

**Spirits contained in flavourings**

**16.**—(1) In the Alcoholic Liquor Duties Act 1979(b), before section 6 insert—

**“5A Exemption from duty on spirits in flavourings**

(1) Duty shall not be payable on any spirits contained in flavourings imported into the United Kingdom or used in the production of flavourings if the flavourings are for use in—

- (a) the preparation of food for human consumption, or
- (b) the preparation of any beverage of an alcoholic strength not exceeding 1.2 per cent.

(2) In subsection (1) above “flavourings” mean any products falling within CN Code 3302 of the Combined Nomenclature established by Council Regulation (EEC) No 2658/87(c) as amended by Commission Regulation (EC) No 1832/2002(d).”.

(2) The amendment made by this article has effect where the duty would otherwise be charged on or after 6th April 2009.

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(a) 1975 c. 22.  
(b) 1979 c. 4.  
(c) OJ No L256, 7.9.87, p.1.  
(d) OJ No L 290, 28.10.2002, p.1.

*The Value Added Tax Act 1994*

**Value of imported goods**

17.—(1) In section 21(6D)(b) of the Value Added Tax Act 1994 (value of imported goods)(a), insert at the end “in circumstances where the exportation and subsequent importation were effected to obtain the benefit of that subsection”.

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

*Name 1*

*Name 2*

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Two of the Lords Commissioners of Her Majesty’s Treasury

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(a) 1994 c. 9; subsection (6D) was inserted by section 12 of the Finance Act 1999 (c. 16) which also amended subsection (4), other relevant amendments were made by section 22 of the Finance Act 1995 (c. 4), section 27 of, and Part IV(3) of Schedule 41 to, the Finance Act 1996 (c. 8) and section 8 of the Finance Act 2006 (c. 25).

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order is made under section 160 of the Finance Act 2008 and enacts a number of existing HMRC extra-statutory concessions.

Article 2 inserts a new section 395A in the Income Tax (Earnings and Pensions) Act 2003 (“ITEPA 2003”). This amendment makes statutory provision for a concession that relieves benefits provided by defined schemes from the charge to income tax in section 394 of ITEPA 2003.

Article 3 inserts a new section 57A in the Income Tax (Trading and Other Income) Act 2005.

Generally, subsistence costs associated with business travel are disallowed as having not been incurred wholly and exclusively for the purposes of the trade. Article 3 amends the Income Tax (Trading and Other Income) Act 2005 by inserting a new section 57A which provides that such subsistence costs associated with business travel are deductible where the trader is itinerant or where such costs are incurred in connection with occasional business journeys made outside of their normal pattern of business.

Article 4 amends section 24 of the Taxation of Chargeable Gains Act 1992 (disposals where assets lost or destroyed, or become of negligible value). The amendment makes statutory provision for a concession which permits a negligible value claim in relation to an asset acquired in a no gain/no loss transaction where the asset became of negligible value during the ownership of the person who made the no gain/no loss disposal or the ownership of an earlier owner where there has been an unbroken series of no gain/no loss disposals.

Article 5 amends section 125 of the Taxation of Chargeable Gains Act 1992 (shares in close company transferring assets at an undervalue) to make statutory provision for a concession which disapplies that section in relation to a transfer of assets which is treated as an income or capital distribution or employment income.

Article 6 amends section 158 of the Taxation of Chargeable Gains Act 1992 (roll-over relief: activities other than trades and interpretation) to make statutory provision for a concession which extends roll-over relief on the replacement of business assets to assets held by a company in which an unincorporated company or other body not established for profit has at least a 90% interest in the company’s shares, profits or assets on a winding up.

Articles 7 to 10 make statutory provision for concessions relating to relief from capital gains tax on a disposal of a private residence.

Article 7 amends section 223(3) of the Taxation of Chargeable Gains Act 1992 (private residences: amount of relief) and allows a period of absence due to the work of a spouse or civil partner to be treated as a period in which the dwelling-house was an individual’s only or main residence.

Article 8 amends section 223 of the Taxation of Chargeable Gains Act 1992. In order for a period of absence to be treated as a period in which the dwelling-house was an individual’s only or main residence, an individual must resume residence after the period of absence. This amendment treats this condition as satisfied where residence is not resumed due to the place of employment of the individual or the individual’s spouse or civil partner.

Article 9 inserts a new section 225B (disposals in connection with divorce, etc). This makes provision for a concession where an individual ceases to live with a spouse or civil partner in a dwelling-house which was that individual’s only or main dwelling house. If the dwelling-house continues to be the only or main residence of the spouse or civil partner and the individual has not given notice for another property to be treated as the individual’s only or main residence, the dwelling-house may be treated as the individual’s only or main residence on disposal to the spouse or civil partner in connection with divorce, annulment, dissolution or separation.

Article 10 inserts a new section 225C (sale of private residence under certain agreements with employer, etc). This makes provision for a concession where an individual whose employment is relocating disposes of a dwelling-house which was that individual's only or main dwelling house to the individual's employer (or person operating under an agreement with the employer) ("the initial disposal") and under the terms of an agreement the individual is entitled to a share of the profit when the property is later sold. If the share of the profit is received within three years of the initial disposal it may be treated as attributable to the initial disposal so that it qualifies for private residence relief to the same extent as did the gain on the initial disposal.

Article 11 inserts a new section 239ZA in the Taxation of Chargeable Gains Act 1992. This makes statutory provision for a concession which relieves from capital gains tax, disposals by trustees of employee benefit trusts that give rise to income tax liability on the part of the employee or other person to whom the property is transferred.

Article 12 amends section 258(2) of the Taxation of Chargeable Gains Act 1992 (works of art etc). Section 258(2) provides that a gain on the disposal of an asset is not a chargeable gain if it accrues on a disposal to certain specified bodies or where the asset is accepted in satisfaction of inheritance tax. The amendment removes the requirement and makes provision for a concession that in order to qualify for this exemption the asset disposed of must be the subject of an inheritance tax undertaking, or an undertaking under section 258, to keep the asset in the United Kingdom, preserve and maintain it and allow reasonable public access.

Article 13 amends sections 5(1)(b), 64 and 272 of the Inheritance Tax Act 1984 to give statutory effect to a concession which makes provision for the owner of foreign works of art to be exempt from inheritance tax if, on the death of the owner, the works of art were in the UK for one or more of the purposes of public display, cleaning, and restoration and for no other purpose.

Article 14 amends section 6 of the Inheritance Tax Act 1984 (excluded property) so as to make provision for a concession that treats for inheritance tax purposes as excluded property any decoration or other award for valour or gallant conduct if there has never been a disposition of the decoration or award for consideration in money or money's worth relating to the decoration or award.

Article 15 amends section 8 of the Oil Taxation Act 1975 (oil allowance). Section 8 provides a volume based relief against Petroleum Revenue Tax known as oil allowance. For each return period section 8(3) provides that each participator will be entitled to a cash equivalent of oil allowance (subject to a maximum upper limit) using the formula  $A \times B / C$ . In the formula A is the participator's gross profit for the period, B is the participator's share of oil allowance for the field. C is the participator's share of oil won from the field.

Section 8(4) calculates the total oil allowance by aggregating relief against sales of oil (excluding gas) (for which see section 8(4)(a)) with relief (if available) against sales of gas (for which see section 8(4)(b)).

Section 8(4) works by modifying the  $A \times B / C$  formula in section 8(3). The intention is to modify the formula in such a way that the allowance is available first in relation to profits from oil (paragraph (a)) and then, if there is an allowance left, in relation to profits from gas (paragraph (b)). However, as it stands, section 8(4) is not quite right. In particular, it does not make the necessary modification of C. The amendment makes provision for a concession which modifies C.

The amendment at article 15 restricts the C factor in cases where subsection (4)(a) applies (by new subparagraph (i)) to the participator's share of oil won and saved by excluding gas. This is then repeated in cases where subsection (4)(b) applies (by new subparagraph (ii)) to the participator's share of oil won and saved by excluding by oil (excluding gas).

Article 16 inserts a new section 5A into Alcoholic Liquor Duties Act 1979 ("ALDA"). It exempts from excise duty spirits contained in flavourings imported into the United Kingdom or used in the production of flavourings provided the flavourings are for use in the preparation of food for human consumption or the preparation of beverages with an alcoholic strength not exceeding 1.2 per cent.

Flavourings is defined as meaning any products falling within CN Code 3302 of the Combined Nomenclature established by Council Regulation (EEC) No 2658/87(a) on the tariff and statistical nomenclature and on the Common Customs Tariff as amended by Commission Regulation (EC) No 1832/2002(b).

Article 17 amends paragraph (b) of section 21(6D) of the Value Added Tax Act 1994 (disapplication of subsection (4)) and makes provision for a concession which limits the temporal condition for the disapplication of subsection (4) (reduced value to be applied to certain goods on importation) to circumstances where a taxpayer has effected the arrangements in order to obtain the benefit of the reduced valuation provided for in that subsection.

An impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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- (a) OJ No L256, 7.9.87, p.1.
  - (b) OJ No L 290, 28.10.2002, p.1; Annex 1 to Council Regulation (EEC) No 2658/87 is replaced by the Annex set out in this Regulation; Ch 33 of the Annex classifies products within CN Code 3302 as “Mixtures of odoriferous substances and mixtures (including alcohol solutions) with a basis of one or more of these substances, of a kind used as raw materials in industry; other preparations based on odoriferous substances, of a kind used for the manufacture of beverages”.

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DRAFT STATUTORY INSTRUMENTS

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**2009 No.**

**INCOME TAX**

**CAPITAL GAINS TAX**

**INHERITANCE TAX**

**PETROLEUM REVENUE TAX**

**EXCISE**

**VALUE ADDED TAX**

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