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## EXPLANATORY NOTE

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

This Order is made under section 160 of the Finance Act 2008 (c. 9) and enacts a number of existing HMRC extra-statutory concessions (“ESCs”). This Order comes into force on 1st March 2012 and the individual articles enacting concessions have effect from a variety of dates on or after 1st March 2012.

Article 2 amends Part 3 of the Finance Act 1994 (c. 9), in particular, by inserting new sections 69A to 69D. These amendments provide that where a taxable insurance contract provides cover for both exempt and non-exempt matters, a premium under that contract is exempt from insurance premium tax (i.e. it is an “excepted premium”), provided that the total amount of the premiums (as specified section 69A(3)) are less than £500,000 and that 10% or less of that total is attributable to non-exempt matters. Section 69B caters for a case in which one or more premiums have been exempted from tax under section 69A, but subsequent premiums received under the same contract take the total premiums received under the contract over the maximum specified in section 69A(3). In such a case section 69B reverses the effect of the exemption for the earlier premiums. Section 69C provides that if a person has not received, and does not expect to receive, a premium that is not an excepted premium the person may apply in writing to the Commissioners for an exemption from the requirement to make returns, but must keep records relating to the premiums received. Section 69D provides that the Commissioners may withdraw the exemption under section 69C if it appears to them that the condition specified in that section is no longer met or the person is not keeping the required records. Section 59 is amended to provide for a right of appeal against a refusal by the Commissioners to grant the exemption under section 69C, or the withdrawal of such an exemption.

Article 3 amends section 148(2) of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (“ITEPA”) to include an additional step when calculating the cash equivalent of the benefit of a car under section 121(1) where the car is shared by more than one employee. This means that where an employee has elected to make a cash payment against the private use of the car under section 144 ITEPA, that payment will be apportioned to that employee when determining that employee’s cash equivalent of the benefit of the car.

Article 4 amends the Income Tax (Trading and Other Income) Act 2005 (c. 5) (“ITTOIA”), inserting new sections 172ZA to 172ZE. These sections apply in calculating the profits of a trade which consists of or includes the carrying on of a crematorium, and in connection with that trade, the sale of niches or memorials or the making of inscriptions. Section 172ZB sets out the deductions 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. Section 172ZC sets out the deductions 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. Section 172D sets out the deductions allowed in respect of an inscription if proceeds from making the inscription are brought into account in calculating the profits of the trade. The “costs of the building” referred to in sections 172B to 172ZD is determined in accordance with section 172ZE. Article 4 also amends section 170(3) ITTOIA.

Article 5 amends the Corporation Tax Act 2009 (c. 4) (“CTA 2009”) inserting new sections 149A to 149E and amending section 147. This provides the same treatment in relation to corporation tax as the amendments to ITTOIA at article 4 provide for income tax.

Article 6 amends Part 2 of ITTOIA to insert a new Chapter 16ZA which applies where a farmer receives compensation for the compulsory slaughter of an animal under a disease control order. Section 225ZB allows a farmer to make a claim to spread the total compensation profit received

across a number of tax years and section 225ZF prescribes time limits for so doing. Sections 225ZD and 225ZE set out how the profits of the farmer are to be adjusted for income tax purposes where a claim is made under section 225ZB. Articles 7 and 8 make consequential amendments.

Article 10 amends Part 3 of CTA 2009 inserting a new Chapter 8A (compensation for the compulsory slaughter of animals). This provides the same treatment in relation to corporation tax as the amendments to ITTOIA at articles 6 to 8 provide for income tax. Article 11 makes consequential amendments.

Articles 13 and 14 amend the Corporation Tax Act (c. 4) (“CTA 2010”) to insert sections 155A, 155B, 174A, and 174B.

Sections 155A and 174A respectively provide that sections 154 and 155 CTA 2010, and section 173 CTA 2010, will not apply in relation to certain types of agreement regulating the affairs of two or more members of a joint venture company carrying on a commercial activity. Sections 155A and 174A apply to agreements which provide for the transfer of shares or securities in the joint venture company, or the suspension of a member’s voting rights, on, or as the result of, the occurring of one or more contingencies. Until a contingency occurs, such agreements are not regarded as arrangements for the purposes of sections 154 and 155, or option arrangements for the purposes of section 173. Sections 155A and 174A, however, will not apply if a member could alone, or together with connected persons, dictate the terms or timing of the transfer of shares or securities, or the suspension of a member’s voting rights, in advance of one or more of the contingencies occurring.

Sections 155B and 174B respectively provide that sections 154 and 155 CTA 2010, and section 173 CTA 2010, do not apply if shares or securities in a company are used as security under a mortgage. The mortgage will not be regarded as an arrangement for the purposes of sections 154 and 155, or option arrangement for the purposes of section 173, until a default, or any other event occurs, which allows the mortgagee to exercise his rights against the mortgagor. This is provided the mortgagee does not possess greater rights over the shares or securities which are the subject of the mortgage than is required by the mortgagee to protect his interest, or could not 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.

Articles 16 and 17 amend CTA 2010 to insert new sections 1030A and 1030B. Dissolution of a company under section 1000 or 1003 of the Companies Act 2006 (or corresponding overseas provisions) is not a formal winding up and so a distribution by it of any surplus assets to its shareholders would in strictness be an income distribution for corporation tax purposes. Section 1030A provides that in specified circumstances a distribution made prior to the dissolution of a company is not an income distribution for the purposes of corporation tax. Section 1030A allows a distribution to be treated as the equivalent of a distribution in a formal winding up. The distribution is treated as a capital payment to be taken into account in determining the capital gains tax liability of a shareholder in the company. Section 1030B disapplies section 1030A should the company within 2 years of a distribution have not been dissolved or secured, as far as was reasonably practicable, payment of all sums due to it or satisfied all of its debts and liabilities.

In line with government commitments, a Tax Information and Impact Note has not been prepared in respect of the majority of this Order. There has been no change in policy: this instrument simply puts a number of existing ESCs on a statutory footing and there is no change to the tax, administrative or other impacts. However, a Tax Information and Impact Note for the legislation at articles 16 and 17, which enact the ESC known as C16, is published on the HMRC website at <http://www.hmrc.gov.uk/tiin/autumn-dec11.htm>.