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STATUTORY INSTRUMENTS

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**2010 No. 157**

**The Enactment of Extra-Statutory Concessions Order 2010**

**Discretionary payments by trustees: employment income**

3.—(1) Chapter 7 of Part 9 of the Income Tax Act 2007<sup>(1)</sup> (settlements and trustees: discretionary payments) is amended as follows.

(2) Before section 493 (discretionary payments by trustees) insert—

*“Payments constituting income of beneficiary (other than employment income)”.*

(3) After section 496 insert—

“Payments constituting employment income of beneficiary

**496A Discretionary payments by trustees: employment income**

(1) Section 496B applies if—

- (a) in a tax year the trustees of a settlement make a discretionary employment income payment, and
- (b) the trustees are UK resident for the tax year.

(2) In this section and section 496B, “discretionary employment income payment” means a payment to a person (“the beneficiary”) that—

- (a) is made in the exercise of a discretion (whether exercisable by the trustees or any other person),
- (b) is made out of income, and
- (c) meets conditions A and B.

(3) Condition A is that what is paid to the beneficiary—

- (a) is, only because of the payment, employment income of the beneficiary, but
- (b) is not exempt income (as defined in section 8 of ITEPA 2003<sup>(2)</sup>).

(4) Condition B is that the payment is made at a time when the settlement is an employee benefit settlement.

(5) A settlement is an employee benefit settlement if the trusts on which the settled property is held do not permit the settled property to be applied otherwise than—

- (a) for the benefit of persons of one or more relevant classes, or
- (b) for the benefit of such persons and for charitable purposes.

(6) “Relevant class” means a class defined by reference to one or more of the following—

- (a) employment in a particular trade or profession,

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<sup>(1)</sup> 2007 c. 3. There have been no relevant amendments to Part 9.

<sup>(2)</sup> Section 1017 of the [Income Tax Act 2007 \(c. 3\)](#) defines “ITEPA 2003” as meaning the [Income Tax \(Employment and Pensions\) Act 2003 \(c. 1\)](#).

- (b) employment by, or holding office with, a body carrying on a trade, profession or undertaking, or
- (c) marriage to or civil partnership with, or relationship to, or dependence on, persons of a class mentioned in paragraph (a) or (b).

(7) Where the trusts on which the settled property is held do not permit the settled property to be applied otherwise than as described in subsection (5) during a period (however defined), the settlement is an employee benefit settlement during (and only during) that period.

#### **496B Relief for trustees**

(1) The trustees of a settlement are entitled (on making a claim in respect of a tax year) to repayment of an amount of income tax equal to the lesser of amount A and amount B.

(2) Amount A is—

$$TEI \times TR$$

where—

TEI is the total of the amounts that are employment income of beneficiaries of the settlement because of discretionary employment income payments made in the tax year by the trustees, and

TR is the trust rate in force for the tax year.

(3) Amount B is the amount of the trustees' tax pool available for the tax year (see section 497) reduced (but not so that it goes below nil) by the total amount of income tax (if any) treated under section 494 as having been paid as a result of payments made by the trustees in the tax year.

(4) A claim under this section may not be made before the end of the tax year to which it relates.”.

(4) Before section 497 (calculation of trustees' tax pool) insert—

*“Tax pool”.*

(5) In section 497(1) (calculation of trustees' tax pool), in Step 1—

(a) after “nil” insert—

“(a),  
and

(b) insert at the end—

“, and

(b) the amount to which the trustees are entitled under section 496B in respect of the previous tax year.”.

(6) In section 504(5)(3) (treatment of income of unauthorised unit trust), for “and 495” substitute “, 495 and 496B”.

(7) The amendments made by paragraphs (3) and (4) have effect in relation to payments made by trustees on or after 6th April 2010.

(8) The amendment made by paragraph (5) has effect for the tax year 2011-12 and subsequent tax years.

(9) The other amendments made by this article have effect for the tax year 2010-11 and subsequent tax years.

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(3) There have been amendments to section 504, but none are relevant here.

(10) Where the trustees of an employee benefit settlement (as defined in section 496A of the Income Tax Act 2007) agree, or have agreed, that the trustees' tax pool available for the tax year 2009-10 or a preceding tax year should be reduced by an amount, that tax pool is to be, or to continue to be, reduced by that amount (even though that reduction is not mentioned in Step 1 of section 497(1) of the Income Tax Act 2007).