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STATUTORY INSTRUMENTS

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**2017 No. 495**

**CAPITAL GAINS TAX  
INHERITANCE TAX  
VALUE ADDED TAX**

**The Enactment of Extra-Statutory Concessions Order 2017**

*Made* - - - - 28th March 2017  
*Coming into force* - - 6th April 2017

The Treasury make the following Order in exercise of the powers conferred by section 160 of the Finance Act 2008<sup>(1)</sup>.

In accordance with section 160(7) of that Act, a draft of this instrument was laid before the House of Commons and approved by resolution of that House.

**Citation and commencement**

1. This Order may be cited as the Enactment of Extra-Statutory Concessions Order 2017 and comes into force on 6th April 2017.

**Transitional provisions for woodlands subject to a deferred estate duty charge**

2. At the end of paragraph 46 of Schedule 19 to the Finance Act 1986<sup>(2)</sup> insert “to the extent that the value transferred is attributable to the land concerned”.

3. The amendment made by article 2 has effect in relation to transfers of value made on or after the date on which this Order comes into force.

**Non-resident or dual resident settlements: meaning of “participator”**

4. In section 96<sup>(3)</sup> of the Taxation of Chargeable Gains Act 1992 (payments by and to companies), in subsection (10) after paragraph (a) insert—

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(1) 2008 c. 9.

(2) 1986 c. 41.

(3) Section 96 of the Taxation of Chargeable Gains Act 1992 (c. 12) derived from section 82A of the Finance Act 1981 (c. 35). Section 82A was inserted in the Finance Act 1981 by section 91 of, and paragraph 4 of Schedule 18 to, the Finance Act 1991 (c. 31) and was later repealed and re-enacted as section 96 of the Taxation of Chargeable Gains Act 1992 by sections 289 and 290 of, and Schedule 12 to, that Act.

“(aa) a person is not to be regarded as a participator in a company controlled by the trustees of a settlement where the person has a share or interest in the capital or income of the company solely by virtue of an interest which the person has under the settlement;”.

5.—(1) Schedule 5(4) to the Taxation of Chargeable Gains Act 1992 is amended as follows.

(2) In paragraph 2A (settlements created before 17th March 1998) after sub-paragraph (9) insert

“(9A) For the purposes of sub-paragraphs (8) and (9) above a person is not to be regarded as a participator in a company controlled by the trustees of a settlement where the person has a share or interest in the capital or income of the company solely by virtue of an interest which the person has under the settlement.”.

(3) In paragraph 8 (meaning of “originating”) after sub-paragraph (8) insert—

“(8A) But a person is not to be regarded as a participator in a company controlled by the trustees of a settlement where the person has a share or interest in the capital or income of the company solely because of an interest which the person has under the settlement.”.

(4) In paragraph 9 (qualifying settlements, and commencement) after sub-paragraph (10) insert—

“(10ZA) For the purposes of sub-paragraphs (9) and (10) above a person is not to be regarded as a participator in a company controlled by the trustees of a settlement where the person has a share or interest in the capital or income of the company solely by virtue of an interest which the person has under the settlement.”.

6. The amendments made by articles 4 and 5 have effect—

- (a) for corporation tax purposes, for accounting periods ending on or after the date on which this Order comes into force, and
- (b) for capital gains tax purposes, for the tax year 2017-18 and subsequent tax years.

#### **Disapplication of disallowance of input tax in insolvency where consideration not paid**

7.—(1) Part 1 of the Value Added Tax Act 1994(5) is amended as follows.

(2) After subsection (1) of section 26A (disallowance of input tax where consideration not paid) insert—

“(1A) Subsection (1) is subject to section 26AA (disapplication of disallowance under section 26A in insolvency).”.

(3) After section 26A insert—

#### **“Disapplication of disallowance under section 26A in insolvency**

**26AA.**—(1) Section 26A(1) does not apply to a person in relation to credit for input tax which relates to a supply where—

- (a) at the time of the supply, no insolvency procedure had effect in relation to the person,

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(4) Paragraph 2A of Schedule 5 was inserted by section 131 of, and paragraph 2 of Schedule 22 to, the Finance Act 1998 (c. 36). Sub-paragraph (10) of paragraph 2A was amended by section 1177 of, and paragraphs 225 and 266(1) and (3)(c) of Schedule 1 to, the Corporation Tax Act 2010 (c. 4). Other relevant amendments have been made to sub-paragraph (9) of paragraph 8 of Schedule 5 which was amended by section 1177 of, and paragraphs 225 and 266(1) and (4)(b) of Schedule 1 to, the Corporation Tax Act 2010 and sub-paragraph (11) of paragraph 9 of Schedule 5 which was amended by section 131 of, and paragraph 4 of Schedule 22 to, the Finance Act 1998 and section 1177 of, and paragraphs 225 and 266(1) and (5)(c) of Schedule 1 to, the Corporation Tax Act 2010.

(5) 1994 c. 23; section 26A was inserted by section 22(1) and (3) of the Finance Act 2002 (c. 23).

- (b) at any time during the relevant period, an insolvency procedure had effect in relation to that person (“the insolvent person”), and
  - (c) the Commissioners have been notified in writing of the matter mentioned in paragraph (b) by or on behalf of a person authorised to deal with the insolvent person’s affairs.
- (2) But where the insolvency procedure mentioned in subsection (1)(b) is a bankruptcy order, award of sequestration, protected trust deed or voluntary arrangement and that bankruptcy order is annulled, that award of sequestration is recalled or that protected trust deed or voluntary arrangement has come to an end prematurely—
- (a) the disapplication of section 26A(1) by subsection (1) above ceases to have effect, and
  - (b) the person to which the bankruptcy order, award of sequestration, protected trust deed or voluntary arrangement relates is to be taken for the purposes of section 26A(1) as not being entitled to the credit for the input tax concerned as from whichever is the later of—
    - (i) the end of the relevant period, and
    - (ii) the date on which the bankruptcy order was annulled, the award of sequestration recalled or the protected trust deed or voluntary arrangement has come to an end prematurely.
- (3) Where the person mentioned in section 26A(1) is entitled as a member of a partnership to credit for input tax this section has effect as if—
- (a) the references in subsections (1)(a) and (b) to “the person” and “that person” were references to the partnership,
  - (b) the reference in subsection (1)(c) to “the insolvent person’s affairs” were a reference to the insolvent partnership’s affairs, and
  - (c) the reference in subsection (2)(b) to “the person”, in connection with a bankruptcy order or a voluntary arrangement, were a reference to the person who is a member of the partnership to which the bankruptcy order or voluntary arrangement relates.
- (4) Subsection (1) does not apply where the insolvency procedure referred to in subsection (1)(b) has effect as part of, or as a consequence of, arrangements where the main purpose, or one of the main purposes, of those arrangements is to obtain a tax advantage by the operation of this section.
- (5) Regulations may make such supplementary, incidental, consequential or transitional provisions as appear to the Commissioners to be necessary or expedient for the purposes of this section.
- (6) For the purposes of this section “the relevant period”, in relation to a supply, is the period beginning immediately after the supply took place and ending six months after—
- (a) the date of that supply, or
  - (b) if later, the date on which the relevant part of the consideration for the supply is payable.
- (7) For the purposes of subsection (6) the relevant part of the consideration is the part of the consideration referable to the credit for input tax which would (ignoring the effect of this section) be disallowed under section 26A(1).
- (8) For the purposes of this section an insolvency procedure has effect in relation to a person at a time when any of the following apply—

- (a) a bankruptcy order has been made under Chapter 1 of Part 9 of the Insolvency Act 1986<sup>(6)</sup> in relation to that person and has not been annulled,
- (b) a warrant has been granted for a petition for sequestration to be served on that person which has resulted in the sequestration of that person's estate or an award of sequestration has been made on an application by that person, in both cases under section 22 of the Bankruptcy (Scotland) Act 2016<sup>(7)</sup>, and in either case the award of sequestration has not been recalled,
- (c) a bankruptcy order has been made under Chapter 1 of Part 9 of the Insolvency (Northern Ireland) Order 1989<sup>(8)</sup> in relation to that person and has not been annulled,
- (d) where that person is a company registered under the Companies Act 2006<sup>(9)</sup> in England and Wales or Scotland or an unregistered company as defined in section 220 of the Insolvency Act 1986 which is deemed to be registered in England and Wales or Scotland under section 221 of that Act, a petition has been presented to the court which has resulted in a winding-up order being made under Chapter 6 of Part 4 or Part 5 of the Insolvency Act 1986 in relation to that person and that person has not been dissolved or that winding-up order has not been stayed or sisted,
- (e) where that person is a company registered under the Companies Act 2006 in Northern Ireland, or an unregistered company as defined in article 184 of the Insolvency (Northern Ireland) Order 1989 which is deemed to be registered in Northern Ireland under article 185 of that Order, a petition has been presented to the court which has resulted in a winding-up order being made under Part 5 or Part 6 of the Insolvency (Northern Ireland) Order 1989 and that person has not been dissolved or that winding-up order has not been stayed,
- (f) that person is in administration for the purposes of Schedule B1 to the Insolvency Act 1986<sup>(10)</sup> or Schedule B1 to the Insolvency (Northern Ireland) Order 1989,
- (g) an appointment of an administrative receiver is in force in relation to that person disregarding any temporary vacancy in the office of receiver,
- (h) an appointment of a liquidator is in force as a consequence of a creditors' voluntary winding up under Chapter 4 of Part 4 of the Insolvency Act 1986 or Chapter 4 of Part 5 of the Insolvency (Northern Ireland) Order 1989 in relation to that person disregarding any temporary vacancy in the office of liquidator,
- (i) a voluntary arrangement has been approved in accordance with Part 1 or Part 8 of the Insolvency Act 1986 or Part 2 or Chapter 2 of Part 8 of the Insolvency (Northern Ireland) Order 1989 in relation to that person and that voluntary arrangement has not come to an end prematurely,
- (j) a county court administration order has been made under Part 6 of the County Courts Act 1984<sup>(11)</sup> or Part 6 of the Judgments Enforcement (Northern Ireland) Order 1981<sup>(12)</sup> in relation to that person and has not ceased to take effect,

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(6) 1986 c. 45.

(7) 2016 asp 21.

(8) S.I. 1989/2405 (N.I. 19); relevant amending instruments are S.I. 2002/3152 (N.I. 6) and 2005/1455 (N.I. 10) (which, amongst other things, inserted Schedule B1 into the 1989 Order); S.R. 2002 No. 334, 2004 No. 307, 2006 No. 61, 2006 No. 370 and 2006 No. 377; S.I. 2007/2194, 2008/948 and 2009/1941.

(9) 2006 c. 46.

(10) 1986 c. 45; Schedule B1 was inserted by Schedule 16 to the Enterprise Act 2002 (c. 40) and amended by paragraph 299 of Schedule 8 to the Courts Act 2003 (c. 39) and article 2 of S.I. 2003/2096.

(11) 1984 c. 28; section 112 (included in Part 6 of the Act) was amended by section 220 of the Insolvency Act 1985 (c. 65), paragraph 2 of Schedule 2 to the Civil Procedure Act 1997 (c. 12) and paragraph 10 of Schedule 9 to the Crime and Courts Act 2013 (c. 22).

(12) S.I. 1981/226 (N.I. 6).

- (k) a compromise or arrangement sanctioned by the court and delivered to the registrar in accordance with section 899 of the Companies Act 2006(13) is in place in relation to that person,
  - (l) that person's estate is vested in any other person as that person's trustee under a trust deed and that trust deed has become a protected trust deed,
  - (m) that person has died and an insolvency administration order has been made which has not been discharged in respect of that person's estate in accordance with an order under section 421 of the Insolvency Act 1986 or article 365 of the Insolvency (Northern Ireland) Order 1989 or that person's estate has been sequestrated under section 22 of the Bankruptcy (Scotland) Act 2016 and the award of sequestration has not been recalled,
  - (n) a voluntary arrangement has been approved in accordance with Part 1 of the Insolvency Act 1986 as applied by Part 2 of the Insolvent Partnerships Order 1994(14) or Part 2 of the Insolvency (Northern Ireland) Order 1989 as applied by Part 2 of the Insolvent Partnerships Order (Northern Ireland) 1995(15) in relation to that person and that voluntary arrangement has not come to an end prematurely,
  - (o) an appointment of a liquidator is in force as a consequence of a creditors' voluntary winding up under Chapter 4 of Part 4 of the Insolvency Act 1986 as applied by Parts 4 and 5 of the Insolvent Partnerships Order 1994, or Chapter 4 of Part 5 of the Insolvency (Northern Ireland) Order 1989 as applied by Part 4 of the Insolvent Partnerships Order (Northern Ireland) 1995 in relation to that person disregarding any temporary vacancy in the office of liquidator,
  - (p) that person is in administration for the purposes of Schedule B1 to the Insolvency Act 1986 as applied by Part 3 of the Insolvent Partnerships Order 1994 or Schedule B1 to the Insolvency (Northern Ireland) Order 1989 as applied by Part 3 of the Insolvent Partnerships Order (Northern Ireland) 1995,
  - (q) a voluntary arrangement has been approved in accordance with Part 1 of the Insolvency Act 1986 as applied by Part 4 of the Limited Liability Partnerships Regulations 2001(16) or Part 2 of the Insolvency (Northern Ireland) Order 1989 as applied by Part 4 of the Limited Liability Partnerships Regulations (Northern Ireland) 2004(17) in relation to that person and that voluntary arrangement has not come to an end prematurely,
  - (r) an appointment of a liquidator is in force as a consequence of a creditors' voluntary winding up under Chapter 4 of Part 4 of the Insolvency Act 1986 as applied by Part 4 of the Limited Liability Partnerships Regulations 2001 or Chapter 4 of Part 5 of the Insolvency (Northern Ireland) Order 1989 as applied by Part 4 of the Limited Liability Partnerships Regulations (Northern Ireland) 2004 in relation to that person disregarding any temporary vacancy in the office of liquidator,
  - (s) that person is in administration for the purposes of Schedule B1 to the Insolvency Act 1986 as applied by Part 4 of the Limited Liability Partnerships Regulations 2001 or Schedule B1 to the Insolvency (Northern Ireland) Order 1989 as applied by Part 4 of the Limited Liability Partnerships Regulations (Northern Ireland) 2004.
- (9) In this section—

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(13) 2006 c. 46; section 899 was amended by paragraph 250 of Schedule 1 to S.I. 2008/948 and article 28 of S.I. 2011/1265 and was applied with modifications by regulation 45 of S.I. 2009/1804.

(14) S.I. 1994/2421; the relevant amending instruments are S.I. 1996/1308, 2002/1308, 2002/2708, 2005/1516 and 2006/622.

(15) S.R. 1995 No. 225; the relevant amending instruments are S.R. 1996 No. 472, 2003 No. 144, 2003 No. 550 and 2006 No. 515.

(16) S.I. 2001/1090.

(17) S.R. 2004 No. 307.

“administrative receiver” means an administrative receiver within the meaning of section 251 of the Insolvency Act 1986 or article 5(1) of the Insolvency (Northern Ireland) Order 1989;

“protected trust deed” has the same meaning as in the Bankruptcy (Scotland) Act 2016;

“tax advantage” has the same meaning as in Schedule 11A; and

“trust deed” has the same meaning as in the Bankruptcy (Scotland) Act 2016.

(10) In this section a voluntary arrangement comes to an end prematurely if it would be regarded as having come to an end prematurely under—

(a) section 7B or section 262C of the Insolvency Act 1986<sup>(18)</sup>; or

(b) article 20B or article 236C of the Insolvency (Northern Ireland) Order 1989<sup>(19)</sup>.

(11) Section 6 applies for determining the time when a supply is to be treated as taking place for the purposes of construing this section.”.

**8.**—(1) In Part 19B of the Value Added Tax Regulations 1995<sup>(20)</sup>, regulation 172H (repayment of input tax) is amended as follows.

(2) In paragraph (1) for “paragraph (5)” substitute “paragraphs (5) and (6)”.

(3) After paragraph (5) insert—

“(6) This regulation does not apply in so far as a person is entitled under section 26AA of the Act<sup>(21)</sup> to credit for input tax in relation to the supply.”.

**9.** The amendments made by articles 7 and 8 have effect in relation to supplies made on or after the date on which this Order comes into force.

*David Evennett  
Andrew Griffiths*

Two of the Lords Commissioners of Her  
Majesty’s Treasury

28th March 2017

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<sup>(18)</sup> 1986 c. 45; sections 7B and 262C were inserted by sections 2 and 3 of, paragraph 10 of Part 1 of Schedule 2 to, and paragraph 12 of Schedule 3 to, the Insolvency Act 2000 (c. 39).

<sup>(19)</sup> S.I. 1989/2405 (N.I. 19; article 20B was inserted by Schedule 2 to, and article 236C was inserted by Schedule 3 to, S.I.2002/3152 (N.I. 6).

<sup>(20)</sup> S.I. 1995/2518, amended by S.I. 2002/3027; there are other amending instruments but none is relevant.

<sup>(21)</sup> Paragraph (1) of regulation 2 of the Value Added Tax Regulations 1995 provides that “the Act” means the Value Added Tax Act 1994.

## EXPLANATORY NOTE

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

This Order is made under section 160 of the Finance Act 2008 (c. 9). It enacts three existing HMRC extra-statutory concessions (“ESCs”). The first is ESC F15 relating to transitional provisions for woodlands subject to a deferred estate duty charge. The second is ESC D40, which is concerned with the charge to capital gains tax in respect of gains made by trustees of a non-resident trust. ESC D40 ensures a beneficiary is not treated as a participator in a company controlled by the trustees merely because of its status as beneficiary. The third is ESC 3.20 concerning the disallowance of input VAT when consideration is not paid for a supply under section 26A of the Value Added Tax Act 1994 (c. 23) (“VATA”). ESC 3.20 ensures that this disallowance is disappplied when certain circumstances relating to insolvency exist.

This Order comes into force on 6th April 2017. The changes made by article 2 have effect in relation to transfers of value made on or after that date. The changes made by articles 4 and 5 have effect, for corporation tax purposes, for accounting periods ending on or after that date, and for capital gains tax purposes, for the tax year 2017-18 and subsequent tax years. The changes made by articles 7 and 8 have effect in relation to supplies made on or after the day on which the Order comes into force.

Article 2 amends paragraph 46 of Schedule 19 to the Finance Act 1986 to provide that, where a transfer of value is made the value of which is partly attributable to woodlands subject to a deferred estate duty charge in respect of timber and that transfer brings to an end the period during which estate duty is payable on the net sale proceeds of the timber, that transfer will not be a potentially exempt transfer (PET) for inheritance tax purposes only to the extent that the value transferred is attributable to those woodlands. Prior to the amendment, all property comprised in a single transfer of value of which any part, however small, consisted of woodlands subject to a deferred estate duty charge was prevented by paragraph 46 from being a PET and was subject to an immediate inheritance tax charge.

Article 4 inserts a new paragraph (aa) in section 96(10) of the Taxation of Chargeable Gains Act 1992 (c.12) that provides that a person is not to be regarded as a participator in a company solely because of any beneficial interest which the person has under the settlement referred to in section 96(2).

Article 5 amends Schedule 5 to the Taxation of Chargeable Gains Act 1992.

Article 5(2) inserts a new sub-paragraph (9A) in paragraph 2A of Schedule 5, which, for the purposes of sub-paragraphs (8) and (9), provides that a person is not to be regarded as a participator in a company controlled by the trustees of a settlement created before 17<sup>th</sup> March 1998 solely because of any beneficial interest which the person has under that settlement.

Article 5(3) inserts a new sub-paragraph (8A) in paragraph 8 of Schedule 5 that provides that a person is not to be regarded as a participator in a company controlled by the trustees of a settlement solely because of any beneficial interest which the person has under a settlement within the scope of that paragraph.

Article 5(4) inserts a new sub-paragraph (10ZA) in paragraph 9 of Schedule 5 that provides that for the purposes of sub-paragraphs (9) and (10) of paragraph 9 a person is not to be regarded as a participator in a company solely because of any beneficial interest which the person has under a settlement where that settlement is either a qualifying settlement or a settlement treated as a qualifying settlement.

Article 7 amends section 26A of VATA and inserts a new section 26AA (disapplication of disallowance under section 26A in insolvency) into VATA to provide that the disallowance of credit

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for input tax provided for in section 26A will not apply when certain circumstances exist. Those circumstances are that (i) no insolvency procedure had effect at the time the supply was made; (ii) an insolvency procedure had effect in relation to a person or partnership within the period between the time when the relevant supply took place and the date six months after the later of that date or the date on which the consideration for which the input tax credit, were it not for the effect of section 26AA, would be disallowed is payable; (iii) where the insolvency procedure is a bankruptcy order, award of sequestration, protected trust deed or voluntary arrangement, it has not been annulled, recalled or ended prematurely; and (iv) the Commissioners have been notified that the insolvency procedure had effect.

Article 8 amends regulation 172H of the VAT Regulations (repayment of input tax) to provide that the obligation to reduce the VAT deduction will not apply where a person is entitled to credit for input tax where the new section 26AA disapplies section 26A of VATA.

A Tax Information and Impact Note has not been prepared for this Instrument as it contains no substantive changes to tax policy.