STATUTORY INSTRUMENTS

2010 No. 157

INCOME TAX
CORPORATION TAX
CAPITAL GAINS TAX

The Enactment of Extra-Statutory Concessions Order 2010

Made - - - -	*27th January 2010*
Coming into force - -	*1st April 2010*

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

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. This Order may be cited as the Enactment of Extra-Statutory Concessions Order 2010 and shall come into force on 1st April 2010.

Accommodation outgoings of ministers of religion

2.—(1) The Income Tax (Earnings and Pensions) Act 2003(**2**) is amended as follows.

(2) In step 1 in section 218(1)(**3**) (calculation of earnings rate for a tax year), after "exempt income", insert ", other than any attributable to section 290A or 290B (accommodation outgoings of ministers of religion)."

(3) After section 290 insert—

"**290A Accommodation outgoings of ministers of religion**

(1) No liability to income tax arises in respect of a person in lower-paid employment as a minister of a religious denomination by virtue of the payment or reimbursement of accommodation outgoings.

(**1**) 2008 c. 9
(**2**) 2003 c. 1.
(**3**) Step 1 in section 218(1) was amended by paragraph 5 of Schedule 3 to the Finance Act 2007 (c. 11).

(2) Subsection (1) does not apply if the minister is paid an allowance intended to be used, wholly or in part, for paying accommodation outgoings (as to which see section 290B).

(3) In this section—

"accommodation outgoings" means amounts incurred by the minister in—

(a) heating, lighting or cleaning qualifying premises; or

(b) maintaining a garden forming part of qualifying premises;

"lower-paid employment" has the meaning given by section 217;

"qualifying premises" has the same meaning as in section 290(**4**).

290B Allowances paid to ministers of religion in respect of accommodation outgoings

(1) This section applies where a person in lower-paid employment as a minister of a religious denomination is paid an allowance intended to be used, wholly or in part, for paying accommodation outgoings.

(2) No liability to tax arises by virtue of the payment of the allowance to the extent that it is used for paying accommodation outgoings.

(3) In this section—

"accommodation outgoings" and "lower-paid employment" have the same meanings as in section 290A;

"qualifying premises" has the same meaning as in section 290.".

(4) The amendments made by this article have effect for the tax year 2010-2011 and subsequent tax years.

Discretionary payments by trustees: employment income

3.—(1) Chapter 7 of Part 9 of the Income Tax Act 2007(**5**) (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

(**4**) Section 290(4) specifies the premises that are qualifying premises.
(**5**) 2007 c. 3. There have been no relevant amendments to Part 9.

(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(**6**)).

(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,

(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 is 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—

(**6**) 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).

"(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)(**7**) (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.

(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).

Discretionary payments by trustees: other provisions

4.—(1) In section 824(3) of the Income and Corporation Taxes Act 1988(**8**) (repayment supplements: individuals and others)—

(a) after paragraph (ab) insert—

"(ac) if the repayment is a repayment as a result of a claim under section 496B of ITA 2007(**9**) (relief for payments by discretionary trust taxable as employment income), the relevant time is the 31 January next following the end of the tax year to which the claim relates;", and

(b) in paragraph (a)(ii), insert at the end "(other than a repayment within paragraph (ac))".

(2) In Part 2 of Schedule 54 to the Finance Act 2009(**10**) (repayment interest: special provision as to repayment interest start date), after paragraph 9 insert—

"Tax on payments out of discretionary trust taxable as employment income

9A. In the case of a repayment made in consequence of a claim under section 496B of ITA 2007(**11**) (relief for payments by discretionary trust taxable as employment income) the repayment interest start date is 31 January next following the end of the tax year to which the claim relates.".

(**7**) There have been amendments to section 504, but none are relevant here.
(**8**) 1988 c. 1. Section 824(3) has been amended by section 196 of and Schedule 19 (paragraph 41(2)) to the Finance Act 1994 (c. 9), section 92 of the Finance Act 1997 (c. 16), section 41 of the Finance Act 1999 (c. 16), and section 90 of the Finance Act 2001 (c. 9).
(**9**) Section 831 of the Income and Corporation Taxes Act 1988 (c. 1) defines "ITA 2007" as meaning the Income Tax Act 2007.
(**10**) 2009 c. 10. Sections 101 to 104 of, and Schedules 53 and 54 to, the Finance Act 2009 contain a new regime for the payment of interest, including interest on sums to be paid by Her Majesty's Revenue and Customs. The new regime will come into force on such day or days as the Treasury may by order appoint (section 104(3)). The new regime will replace existing provisions about interest, including section 824 of the Income and Corporation Taxes Act 1988 (c. 1). Schedule 54 includes a restatement of provisions of that section, which is expected to be repealed by order (section 104(5) and (6)).
(**11**) Section 126 of the Finance Act 2009 (c. 10) defines "ITA 2007" as meaning the Income Taxes Act 2007.

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

Estimated Gift Aid donations by companies

5.—(1) In the Income and Corporation Taxes Act 1988(**12**), after section 339(3B) insert—

"(3BA) In a case where a company makes a payment to a charity ("the donation"), and the charity makes a payment to the company ("the repayment"), then for the purposes of subsection (3B)(a) the donation is not made subject to a condition as to repayment if—

(a) the company is wholly owned by the charity, or by a number of charities that include the charity;

(b) the donation is of an amount which the company estimates to be the amount necessary to reduce to nil the company's total profits for the accounting period in which the donation is made ("the relevant period");

(c) the only purpose for which the charity makes the repayment is to adjust the amount of the donation so that it is of the amount actually necessary to reduce to nil the company's total profits for the relevant period; and

(d) the repayment is made no later than 12 months after the end of the relevant period.

(3BB) If subsection (3BA) applies—

(a) the repayment is not non-charitable expenditure for the purposes of section 505(4)(**13**) or section 543(1)(f) of ITA 2007; and

(b) paragraphs 56 and 62 (but not 64) of Schedule 18 to the Finance Act 1998(**14**) (supplementary claims or elections) apply to the repayment.".

(2) The amendment made by paragraph (1) has effect in relation to payments to charities made on or after 1st April 2010.

Income of contemplative communities or of their members

6.—(1) In the Income and Corporation Taxes Act 1988, after section 508 insert—

"**508A Contemplative religious communities: profits exempt from corporation tax**

(1) Subsection (2) applies in a case where members of a qualifying contemplative religious community transfer all their income and assets, or covenant all their income, to the community ("the independent community") (and for this purpose it is irrelevant whether or not the community is part of an order or religious institution).

(2) As respects each chargeable period of the independent community, and each person who is a qualifying member of the independent community at any time in that period, the independent community shall be treated for the purposes of corporation tax as if an amount of its profits for the chargeable period equal to the relevant amount (see subsections (5) to (7)) were income of the qualifying member.

(3) Subsection (4) applies in a case where—

(a) one or more qualifying contemplative religious communities ("constituent communities") are part of an order or religious institution ("the parent body"), and

(**12**) 1988 c. 1; section 339(3B) was inserted by section 26 of the Finance Act 1990 (c. 29) and amended by section 40 of the Finance Act 2000 (c. 17), section 58 of the Finance Act 2006 (c. 25) and section 60 of the Finance Act 2007 (c. 11).
(**13**) Section 505(4) was amended by section 55 of the Finance Act 2006 (c. 25) and section 1027 of the Income Tax Act 2007 (c. 3).
(**14**) 1998 c. 36.

(b) members of the constituent communities transfer all their income and assets, or covenant all their income, to the parent body.

(4) As respects each chargeable period of the parent body, and each person who is a qualifying member of a constituent community at any time in that period, the parent body shall be treated for the purposes of corporation tax as if an amount of its profits for the chargeable period equal to the relevant amount (see subsections (5) to (7)) were income of the qualifying member.

(5) For the purposes of subsections (2) and (4), the relevant amount, in relation to a chargeable period, is the amount of the annual personal allowance for persons under 65 (see section 35 of ITA 2007) for—

(a) the tax year which begins in the chargeable period, or

(b) if no tax year begins in the chargeable period, the tax year which is current when the chargeable period begins.

(6) But, if the chargeable period is less than 12 months, the relevant amount is—

$$\frac{P}{365} \times A$$

where—

P is the number of days in the chargeable period;

A is the amount determined under subsection (5) in relation to the chargeable period.

(7) If, during the chargeable period, an individual ceases to be a qualifying member of the independent community or a constituent community (otherwise than on death), the relevant amount, in relation to the chargeable period and that qualifying member, is—

$$\frac{Q}{P} \times B$$

where—

Q is the number of days in the chargeable period for which the individual is a qualifying member of the independent community or constituent community;

P is the number of days in the chargeable period;

B is the amount determined under subsection (5), or subsections (5) and (6), in relation to the chargeable period.

(8) So far as the exemption from corporation tax conferred by this section calls for repayment of tax, no repayment shall be made except on a claim made by the independent community or parent body.

(9) In a case where a member of an independent community or constituent community—

(a) has transferred or covenanted income to the community (in the case of an independent community) or the parent body (in the case of a constituent community), and

(b) has income for a tax year which does not exceed 20% of the annual personal allowance for persons under 65 (see section 35 of ITA 2007) for that tax year,

the member is, for the purposes of this section, to be taken to have transferred or covenanted all his or her income for that tax year to the community or parent body.

(10) For the purposes of this section a contemplative religious community is a "qualifying" contemplative religious community if—

(a) the community is established in the United Kingdom,

(b) the members of the community live and practise their religion in a communal establishment, and

(c) the community is not a charity, but the religion that is professed by the members of the community does not prevent the community from being a charity.

(11) In this section—

"member", in relation to a religious community, means an individual who—

(a) is living in the community, and

(b) has taken vows or made equivalent commitments (whether probationary or not);

"qualifying member", in relation to a religious community, means a member of the community who—

(a) has been a member of the community for a period of at least six months, and

(b) has transferred all his or her income and assets, or covenanted all his or her income, to the community (in the case of an independent community) or the parent body (in the case of a constituent community).

508B Contemplative religious communities: gains exempt from corporation tax

(1) Subsection (2) applies if, as respects a chargeable period—

(a) section 508A(2) applies in relation to an independent community,

(b) the profits of the independent community in the chargeable period are less than the total of the amounts that fall to be treated as income of the qualifying members of the community in accordance with section 508A(2), and

(c) the independent community has chargeable gains in the chargeable period.

(2) As respects the chargeable period and each qualifying member of the independent community, the community shall be treated for the purposes of corporation tax as if the relevant amount of its chargeable gains for that period were income of the qualifying member.

(3) Subsection (4) applies if, as respects a chargeable period—

(a) section 508A(4) applies in relation to a parent body,

(b) the profits of the parent body in the chargeable period are less than the total of the amounts that fall to be treated as income of the qualifying members of the constituent communities in accordance with section 508A(4), and

(c) the parent body has chargeable gains in the chargeable period.

(4) As respects the chargeable period and each qualifying member of a constituent community, the parent body shall be treated for the purposes of corporation tax as if the relevant amount of its chargeable gains for that period were income of the qualifying member.

(5) For the purposes of subsections (2) and (4), the relevant amount, in relation to a qualifying member of the independent community or a constituent community, is the smaller of—

(a) the shortfall in profits, and

(b) the average gain.

(6) The shortfall in profits is the difference between—

(a) the relevant amount determined under section 508A(5) to (7) in relation to the qualifying member, and

(b) the amount that has actually been treated as the income of the qualifying member.

(7) The average gain is—

$$\frac{G}{N}$$

where—

G is the amount of the chargeable gains which the independent community or parent body has in the chargeable period;

N is the number calculated by adding together the relevant value for each qualifying member of the independent community or constituent communities who, under section 508A(2) or (4), falls to be treated as having income.

(8) For the purposes of calculating "N" in subsection (7)—

(a) the relevant value for a qualifying member is 1;

(b) but, if section 508A(7) applies in relation to the qualifying member, the relevant value for that member is—

$$1 \times \frac{Q}{P}$$

where Q and P have the same meanings as in section 508A(7).

(9) So far as the exemption from corporation tax conferred by this section calls for repayment of tax, no repayment shall be made except on a claim made by the independent community or parent body.".

(2) The amendment made by paragraph (1) has effect in relation to chargeable periods beginning on or after 1st April 2010.

Disposals of assets derived from larger holdings: valuation as at 31st March 1982

7.—(1) The Taxation of Chargeable Gains Act 1992(**15**) is amended as follows.

(2) In section 55(6) (disposal of assets acquired by no gain/no loss disposals since 31st March 1982), omit the "and" at the end of paragraph (a) and after that paragraph insert—

"(aa) in the case of a disposal to which paragraph 1A of Schedule 3 applies (certain holdings of shares or securities), the market value of the asset on that date is to be determined in accordance with that paragraph; and"**.**

(3) In Schedule 3 (assets held on 31st March 1982), after paragraph 1 insert—

"**1A.**—(1) This paragraph applies where—

(a) paragraph 1(1) applies to a disposal of shares in or securities of a company that are of a class,

(b) accordingly, the shares or securities constitute or form part of a holding which the person making the disposal ("P") is treated as having held on 31st March 1982 ("the deemed 1982 holding"),

(c) the disposal by which P acquired the shares or securities, and any previous disposal of them after 31st March 1982, was a disposal to which section 171(1) (transfers within a group) applied,

(d) some or all of the shares or securities constituting the deemed 1982 holding were in fact held on 31st March 1982 by a person other than P, and

(e) in the hands of that person on that date they formed part of a holding which—

(**15**) 1992 c. 12

(i) consisted of shares or securities of the same class as the shares or securities disposed of, and

(ii) was larger than the deemed 1982 holding.

(2) If P makes a claim, then for the purposes of section 35(2) the market value on 31st March 1982 of the shares or securities disposed of is to be treated as being—

$$VLH \times \frac{NDO}{NLH}$$

where—

VLH is the market value on 31st March 1982 of the larger holding mentioned in sub-paragraph (1)(e) (in the hands of the person who in fact held it on that date),

NDO is the number of shares or securities disposed of, and

NLH is the number of shares or securities comprised in the larger holding on that date.

(3) Sub-paragraph (4) applies where sub-paragraph (1)(d) and (e) are met by two or more persons holding the shares or securities as two or more holdings or parts of holdings ("the original holdings").

(4) Sub-paragraph (2) applies for the purpose of calculating the market value on 31st March 1982 of the shares or securities disposed of, except that—

(a) VLH is the market value on 31st March 1982 of the largest of the original holdings, and

(b) NLH is the number of shares or securities comprised in that holding.

(5) A claim under sub-paragraph (2) must be made on or before the second anniversary of the end of the accounting period of P in which the disposal takes place.

(6) Shares in or securities of a company shall not be treated as being of the same class unless they are so treated by the practice of a recognised stock exchange or would be so treated if dealt with on a recognised stock exchange.".

(4) The amendments made by this article have effect in relation to disposals made on or after 1st April 2010.

Relief for exchanges of joint interests

8.—(1) In the Taxation of Chargeable Gains Act 1992, after section 248 insert—

"Joint interests in land

248A Roll-over relief on disposal of joint interests in land: conditions

(1) Section 248B applies where conditions A to E are met.

(2) Condition A is that a person ("the landowner") and one or more other persons jointly hold—

(a) a holding of land, or

(b) two or more separate holdings of land.

(3) Condition B is that the landowner disposes of an interest ("the relinquished interest") in—

(a) the holding, or

(b) one or more of the holdings,

to the co-owner or to one or more of the co-owners.

(4) Condition C is that the consideration for the disposal is or includes an interest ("the acquired interest") in a holding of land held jointly by the landowner and one or more of the co-owners.

(5) Condition D is that as a consequence of the disposal (taken together with any related disposals) the landowner and each of the co-owners become—

(a) in a case falling within subsection (2)(a), the sole owner of part of the holding, or

(b) in a case falling within subsection (2)(b), the sole owner of one or more of the holdings.

(6) Condition E is that the acquired interest is not an interest in excluded land (see section 248C).

(7) For the purposes of this section—

(a) references to a holding of land include references to an estate or interest in a holding of land, and are to be read in accordance with section 243(3);

(b) references to holding land jointly are to holding land—

(i) in England and Wales, as joint tenants or tenants in common,

(ii) in Scotland, as joint owners or owners in common, or

(iii) in Northern Ireland, as joint tenants, tenants in common or coparceners;

(c) "co-owner" means any person who holds a holding of land jointly with the landowner;

(d) a related disposal (in relation to a disposal mentioned in condition B) is a disposal of an interest in the holding, or in one or more of the holdings, which is made—

(i) by the landowner to a co-owner, or

(ii) by a co-owner to the landowner or another co-owner,

at the same time as the disposal mentioned in that condition;

(e) spouses who are living together, or civil partners who are living together, are together treated as a landowner or a co-owner.

248B Calculation of relief

(1) In a case where the amount or value of the consideration for the disposal of the relinquished interest is equal to or less than the market value of that interest, the landowner, on making a claim, is to be treated for the purposes of this Act—

(a) as if the consideration for the disposal of the relinquished interest were of such amount as would secure that on the disposal neither a gain nor a loss accrues, and

(b) as if the amount or value of the consideration for the acquisition of the acquired interest were reduced by the excess of the amount or value of the actual consideration for the disposal of the relinquished interest over the amount of the consideration which the landowner is treated as receiving under paragraph (a).

(2) In a case where the amount or value of the consideration for the disposal of the relinquished interest exceeds the market value of that interest, then if the excess ("the excess consideration") is less than the amount of the gain (whether all chargeable gain or not) accruing on the disposal of the relinquished interest, the landowner, on making a claim, is to be treated for the purposes of this Act—

(a) as if the amount of the gain so accruing were reduced to the amount of the excess consideration (and, if not all chargeable gain, with a proportionate reduction in the amount of the chargeable gain), and

(b) as if the amount or value of the consideration for the acquisition of the acquired interest were reduced by the amount by which the gain is reduced (or, as the case may be, the amount by which the chargeable gain is proportionately reduced) under paragraph (a).

(3) Subsections (1) and (2) are subject to section 248C(3).

(4) Nothing in subsection (1) or (2) affects the treatment for the purposes of this Act of a co-owner (within the meaning given by section 248A(7)).

(5) Where subsection (1)(a) applies to exclude a gain which, in consequence of Schedule 2 (assets held on 6th April 1965) is not all chargeable gain, the amount of the reduction to be made under subsection (1)(b) shall be the amount of the chargeable gain, and not the whole amount of the gain.

248C Excluded land

(1) Land is excluded land to the extent that—

(a) it is a dwelling-house or part of a dwelling-house (or an interest in or right over a dwelling-house), and

(b) by virtue of, or of any claim under, any provision of sections 222 to 226 (private residences) the whole or any part of a gain accruing on a disposal of it by the landowner at a material time would not be a chargeable gain.

(2) In subsection (1)(b), "a material time" means any time during the period of 6 years beginning on the date of the acquisition of the acquired interest.

(3) If land was not excluded land at the date of the acquisition of the acquired interest but becomes excluded land within 6 years of the acquisition, the amount of any chargeable gain accruing on the disposal of the relinquished interest shall be re-determined without regard to any relief previously given under section 248B by reference to the amount or value of the consideration for the acquisition of the interest in that land.

(4) Any adjustments of capital gains tax in accordance with subsection (3), whether by way of assessment or otherwise, may be made at any time, despite anything in section 34 of the Management Act(**16**) (time limit for assessments).

(5) Expressions used in this section have the same meaning as in section 248A.

248D Milk quotas

(1) This section applies where—

(a) section 248B applies to a holding (or holdings) of land, and

(b) milk quota is associated with the holding in which the relinquished interest is held and with the holding in which the acquired interest is held.

(2) Section 248B(1), (2) and (4) apply—

(a) to the disposal of quota associated with the holding in which the relinquished interest is held as they apply to the disposal of that interest, and

(b) to the acquisition of quota associated with the holding in which the acquired interest is held as they apply to the acquisition of that interest.

(**16**) Section 288 of the Taxation of Chargeable Gains Act 1992 (c. 12) defines "the Management Act" as meaning the Taxes Management Act 1970 (c. 9).

248E Relief on disposal of joint interests in private residence

(1) This section applies where conditions A to E are met.

(2) Condition A is that a person ("the landowner") and one or more other persons jointly hold an interest in two or more dwelling–houses.

(3) Condition B is that the landowner disposes of an interest ("the relinquished interest") in one or more of the dwelling-houses to the co-owner or to one or more of the co-owners.

(4) Condition C is that the consideration for the disposal is or includes an interest ("the acquired interest") in one of the other dwelling–houses.

(5) Condition D is that as a consequence of the disposal (taken together with any related disposals)—

(a) the dwelling-house in which the landowner acquires an interest becomes the only or main residence of the landowner, and

(b) each of the other dwelling-houses becomes the only or main residence of one (and only one) of the co-owners.

(6) Condition E is that if each dwelling-house were disposed of immediately after the disposal (or disposals) mentioned in subsection (5) then by virtue of sections 222 and 223 (private residences) no part of the gain accruing on each of those disposals would be a chargeable gain.

(7) The landowner, on making a claim jointly with the co-owner or co-owners, shall be treated for the purposes of this Act—

(a) as if the consideration for the disposal of the relinquished interest were of such amount as would secure that on the disposal neither a gain nor a loss accrues, and

(b) as if the acquired interest were acquired by the landowner—

(i) at the time it was acquired jointly by the landowner and the co-owner or co-owners, and

(ii) for a consideration equal to the amount of the sums that would have been allowable under section 38(1)(a) and (b) (acquisition and disposal costs etc) as a deduction in the computation of any gain on a disposal of the acquired interest by the co-owner or co-owners.

(8) For the purposes of this section—

(a) "co-owner" means any person who holds an interest in a dwelling-house jointly with the landowner;

(b) references to holding land jointly are to holding land—

(i) in England and Wales, as joint tenants or tenants in common,

(ii) in Scotland, as joint owners or owners in common, or

(iii) in Northern Ireland, as joint tenants, tenants in common or coparceners;

(c) a related disposal (in relation to a disposal mentioned in condition B) is a disposal of an interest in a dwelling-house which is made—

(i) by the landowner to a co-owner, or

(ii) by a co-owner to the landowner or another co-owner,

at the same time as the disposal mentioned in that condition;

(d) spouses who are living together, or civil partners who are living together, are together treated as a landowner or a co-owner.".

(2) The amendment made by paragraph (1) has effect in relation to disposals on or after 6th April 2010.

Compensation for deprivation of foreign assets

9.—(1) In the Taxation of Chargeable Gains Act 1992, after section 268A(**17**) insert—

"**268B Compensation for deprivation of foreign assets**

(1) A gain is not a chargeable gain if—

(a) it accrues to a person on receipt of a capital sum paid by way of compensation for the deprivation of a foreign asset,

(b) no legal redress was available when the deprivation occurred, and

(c) the sum is paid as the result of a relevant compensation award.

(2) A relevant compensation award is an award or distribution made—

(a) under—

(i) an Order in Council made under the Foreign Compensation Act 1950(**18**), or

(ii) arrangements established by the government of a territory outside the United Kingdom that are equivalent in effect to such an Order,

(b) as a result of a recommendation of—

(i) the Spoliation Advisory Panel, or

(ii) a body outside the United Kingdom whose purposes and functions are equivalent to those of the Panel, or

(c) in settlement of a legal claim to the effect that the deprivation was unlawful or in accordance with an order to that effect made by a court, tribunal or other competent authority with jurisdiction to decide such a claim.

(3) Reference in this section to the payment of a capital sum by way of compensation for the deprivation of a foreign asset includes—

(a) payment as a result of the abandonment or extinguishment of rights in respect of the deprivation;

(b) return of the asset itself.

(4) In the case of a gain accruing to a person other than the original owner—

(a) subsection (1) does not apply if consideration had been given at any time (whether by that person or someone else) for the right to receive the compensation, but

(b) consideration given on an acquisition falling within section 58(1) or 171(1)(**19**) is to be ignored for these purposes.

(5) If the capital sum is paid (or the foreign asset returned) to a person to whom an allowable loss has accrued as a result of—

(a) the deprivation of the foreign asset, or

(b) the abandonment or extinguishment of rights in respect of the deprivation,

subsection (1) applies only to so much of any gain as exceeds that loss.

(**17**) Section 268A was inserted by section 64(4) of the Finance Act 2006 (c. 25).
(**18**) 1950 c. 12 (14 Geo 6); amended by Part 2 of the Schedule to the Statute Law (Repeals) Act 1974 (c. 22), paragraph 12(2) of Schedule 2 to the Statute Law (Repeals) Act 1989 (c. 43), paragraph 25 of Schedule 6 to the Judicial Pensions and Retirement Act 1993 (c. 8) and the Foreign Compensation (Amendment) Act 1993 (c. 16).
(**19**) Section 171(1) was substituted by paragraph 2(2) of Schedule 29 to the Finance Act 2000 (c. 17).

(6) For a person to obtain relief under this section, the person must make a claim.

(7) If the capital sum is paid by means of the transfer of an asset (or the foreign asset is returned), that asset is to be treated for the purposes of computing a gain or a loss on its subsequent disposal as if it were acquired for a consideration equal to its market value at the time of the transfer.

(8) In this section—

"capital sum" means money or money's worth;

"deprivation", in relation to a foreign asset, includes deprivation resulting from—

(a) the seizure, confiscation, forfeiture, destruction or expropriation of the asset,

(b) the disposal of the asset by a sale under duress for less than market value;

"foreign asset" means an asset which was situated outside the United Kingdom at the time of the deprivation;

"legal redress", in relation to the deprivation of a foreign asset, means a right to recover the asset or to receive compensation for the deprivation;

"original owner" means the person who owned the foreign asset at the time of the deprivation;

"Spoliation Advisory Panel" includes any successor to that Panel.

(9) This section does not apply in relation to a gain to which section 268A applies.".

(2) The amendment made by paragraph (1) has effect—

(a) for corporation tax purposes, in relation to capital sums received on or after 1st April 2010, and

(b) for capital gains tax purposes, in relation to capital sums received on or after 6th April 2010.

Tony Cunningham
Dave Watts
Two of the Lords Commissioners of Her Majesty's Treasury

27th January 2010

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under section 160 Finance Act 2008 (c. 9) and enacts a number of existing HM Revenue and Customs extra-statutory concessions.

Article 2 amends section 218(1) of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) ("ITEPA 2003") so as to exclude from the concept of "exempt income" any amounts within the new sections 290A and 290B that are inserted by paragraph (3). This means that the new exemptions cannot influence whether a person is in "lower-paid employment", which is a condition of the exemptions. Article 2(3) inserts new sections 290A and 290B in ITEPA 2003. These relieve from income tax expenses paid for or reimbursed to ministers of religion in respect of heating, lighting, cleaning and gardening in connection with living accommodation provided with the employment. Similar relief is given in respect of allowances paid to ministers and used by them for the purpose of meeting such expenses.

Similar relief for Class 1 National Insurance contributions is being given by a separate instrument amending the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004).

Article 3 amends Chapter 7 of Part 9 of the Income Tax Act 2007 (c. 3) ("ITA 2007") by making legislative provision for a claim for repayment of income tax where the trustees of certain discretionary trusts pay amounts that, in the recipient's hands, are employment income (but not exempt income within the meaning of section 8 of ITEPA 2003). The amendments bring the tax consequences of discretionary payments of (non-exempt) employment income within the Self Assessment regime.

New sections 496A and 496B of ITA 2007 (article 3(3)) make provision for trustees making discretionary payments of employment income to be able to claim repayment after the end of a tax year of an amount of income tax not exceeding the lesser of the tax pool for that year, and a notional amount of tax derived by applying the trust rate in force for that year to the amount of such discretionary payments made in that tax year. Article 3(5) amends the method of calculation of "the tax pool" at section 497(1) of ITA 2007 to take into account the new section 496B relief. Article 3(6) adds new section 496B to the provisions listed in section 504(5) of ITA 2007 (treatment of unauthorised unit trusts) that do not apply in relation to payments made by trustees of unauthorised unit trusts. Articles 3(7) to 3(9) make provision about when the different paragraphs of article 3 take effect. Article 3(10) makes provision about the effect of an agreement made under former Extra-Statutory Concession A68, first published in an Inland Revenue press release dated 22 June 1988, in relation to the tax pool.

Article 4(1) makes provision for repayments made by virtue of the new section 496A of ITA 2007 to attract repayment supplement; article 4(2) makes a consequential amendment in that respect to the Finance Act 2009 (c. 10).

Article 5 inserts section 339(3BA) and (3BB) into the Income and Corporation Taxes Act 1988 (c. 1) ("ICTA 1988") to provide that where a charity-owned company makes an estimated gift aid donation to its parent charity, for the purpose of reducing to nil the company's total profits for the accounting period in which the donation is made, the estimate is excessive, and a repayment is made within 12 months solely for adjustment purposes, the donation was not made "subject to a condition as to repayment" and the repayment is not treated as non-charitable expenditure for corporation tax or income tax purposes.

Article 6 inserts new sections 508A and 508B into ICTA 1988 to provide for a share of a qualifying contemplative religious community's corporation tax profits (equal in amount to the annual income tax personal allowance for persons under 65) to be treated as the income of each qualifying member (broadly, permanent members who have covenanted their assets or income to the community or its parent body). If the community does not have sufficient corporation tax profits to be fully apportioned in accordance with section 508A, a balancing amount of its chargeable gains can be attributed to qualifying members under section 508B.

Article 7 amends section 55 of the Taxation of Chargeable Gains Act 1992 (c. 12) ("TCGA 1992") and inserts a new paragraph 1A into Schedule 3 to that Act. The effect of these changes is to make provision where a company disposes of shares or securities which it acquired from another member of its group. In such a case the gain on the disposal may fall to be computed as if the company had owned the shares or securities on 31st March 1982. The effect of the amendment is that the company may make a claim to value the shares or securities at 31st March 1982 as though they were part of the largest holding in which any of them were comprised at that date. This can give a higher value than would be the case if the shares or securities were valued as part of a smaller holding. As the value at 31st March 1982 is deducted in computing the gain on the company's disposal, a higher value results in the chargeable gain from the disposal being reduced.

Article 8 inserts sections 248A to 248E into TCGA 1992 to make provision where there is an exchange of interests in land. Section 248A and 248B apply to an exchange of interests in land where before the exchange the holdings of land are held jointly and after the exchange the holdings are solely owned. A gain accruing on the disposal on the interest may be rolled-over where the consideration for the disposal does not exceed the value of the interest acquired in exchange or where the consideration exceeds the value of the interest received but does not exceed the gain on the interest disposed of. This relief does not apply to "excluded land". Section 248C defines excluded land, essentially, this is land the disposal of which would be exempt from capital gains tax as a private residence. Section 248D applies section 248A with modifications to exchanges of milk quotas associated with land to which that section applies. Section 248E makes provision for certain exchanges of interests in private residences to be no gain/no loss disposals.

Article 9 inserts a new section 268B into TCGA 1992 (compensation for deprivation of foreign asset) to relieve from capital gains tax and from corporation tax on chargeable gains the receipt of certain sums paid by way of compensation for the deprivation of foreign assets.

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