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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). 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

**Status:** *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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.