STATUTORY INSTRUMENTS

2009 No. 730

The Enactment of Extra-Statutory Concessions Order 2009

The Taxation of Chargeable Gains Act 1992

Employee trusts

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

(2) For the heading of section 239 substitute "Disposals to trustees of employee trusts".

(3) After section 239 insert—

"**239ZA Relief for disposals by trustees of employee trusts**

(1) Any gain accruing to trustees on the disposal of an asset comprised in the settled property of an employee trust shall not be a chargeable gain where the disposal is—

(a) a disposal to a beneficiary, or

(b) a deemed disposal under section 71(1),

if the conditions in subsection (2) are satisfied.

(2) The conditions are that—

(a) an amount that is equal to or exceeds the market value of the asset is chargeable to income tax as employment income within the meaning of section 7 of ITEPA 2003(**2**) (meaning of "employment income" etc);

(b) neither the beneficiary nor (if different) the person who is liable for the income tax is an excluded person;

(c) no actual consideration (as opposed to consideration deemed to be given by any enactment relating to the taxation of chargeable gains) is given directly or indirectly to the trustees for the asset; and

(d) Schedule 7D(**3**) does not to any extent prevent the gain being a chargeable gain.

(3) The following are excluded persons—

(a) a participator in a company, shares in or securities of which are comprised in the settled property;

(b) a participator in a close company that has provided any property that has become comprised in the settled property;

(c) a person who was a participator in a company within paragraph (a) or (b) at any time during the 10 years before the shares, securities or other property concerned became comprised in the settled property;

(d) a person connected with a person within any of paragraphs (a) to (c).

(**1**) 1992 c. 12.
(**2**) Section 288(1) of the Taxation of Chargeable Gains Act 1992 defines "ITEPA 2003" as meaning the Income Tax (Earnings and Pensions) Act 2003 (c. 1); the definition was inserted by paragraph 219 of Schedule 6 to that Act.
(**3**) Schedule 7D was inserted by paragraph 221 of Schedule 6 to the Income Tax (Earnings and Pensions) Act 2003.

(4) For the purposes of subsection (3)—

(a) "participator" has the same meaning as in section 239 and shall, in the case of a company which is not a close company, be construed as a person who would be a participator in the company if it were a close company, but

(b) a person is not a participator unless either—

(i) that person is entitled to, or entitled to rights enabling the acquisition of, 5% or more of the share capital of the company or any class of shares in the company, or

(ii) that person would be entitled to 5% or more of the company's assets on winding-up.

(5) In determining whether a person is connected with another for the purposes of this section, section 286 shall apply as if subsection (8) of that section also mentioned uncle, aunt, nephew and niece.

(6) In this section—

"beneficiary" means a person within paragraph (a) or (b) of section 86(1) of the Inheritance Tax Act 1984 (trusts for benefit of employees);

"close company" includes a company which, if resident in the United Kingdom, would be a close company as defined in section 288;

"employee trust" means a settlement of property to which section 86 of the Inheritance Tax Act 1984 applies or would apply but for subsection (3) of that section;

"market value" means the market value for the purposes of capital gains tax (as to which see section 272).".

(4) The amendments made by this article have effect in relation to disposals on or after 6th April 2009.