

2013 No. 234

INCOME TAX

CAPITAL GAINS TAX

STAMP DUTY

STAMP DUTY LAND TAX

The Enactment of Extra-Statutory Concessions Order 2013

Approved by the House of Commons

Made - - - - 6th February 2013

Coming into force - - 1st March 2013

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

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 2013 and comes into force on 1st March 2013.

Relief for chargeable gains on exchanges of joint interests in land

2.—(1) In section 248B of the Taxation of Chargeable Gains Act 1992(b) (calculation of relief), for subsections (1) and (2) substitute—

“(1) If the amount or value of the consideration for the disposal of the relinquished interest is equal to or less than the amount or value of the consideration for the acquired 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 to the landowner, and

(a) 2008 c. 9.

(b) 1992 c. 12. Section 248B was inserted by article 8(1) of S.I. 2010/157.

- (b) as if the amount or value of the consideration for the acquired interest were reduced by the excess of the amount or value of the 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) Where the amount or value of the consideration for the disposal of the relinquished interest exceeds the amount or value of the consideration for the acquired interest, then if the excess (“the unexpended 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 unexpended 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 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).”

(2) The amendment made by paragraph (1) has effect in relation to disposals on or after 1 March 2013.

Certain employee legal costs paid by employer not taxed

3.—(1) In section 413A of the Income Tax (Earnings and Pensions) Act 2003(a) (exception for payment of certain legal costs)—

- (a) in subsection (3)(b) for “compromise” (in each place where it occurs) substitute “settlement”; and
- (b) in subsection (4) omit the definition of “compromise agreement”.

(2) The amendments made by this article have effect in relation to payments made on or after 1 March 2013.

Groups of companies arrangements: stamp taxes

4.—(1) After section 42 of the Finance Act 1930(b), (relief from transfer stamp duty in case of transfer of property as between associated companies) insert—

“Certain arrangements not within section 42

42A.—(1) Arrangements entered into by a joint venture company which, apart from this section, would be arrangements of the kind mentioned in section 42(2) are not to be treated as such arrangements if and so long as—

- (a) the arrangements fall within subsection (2), and
- (b) none of the contingencies mentioned in subsection (3) to which the arrangements relate has occurred.

(2) Arrangements fall within this subsection if they are—

- (a) an agreement which provides for the transfer of shares or securities in the joint venture company to one or more members of that company on, or as a result of, one or more contingencies mentioned in subsection (3) occurring, or

(a) 2003 c. 1. Section 413A was inserted by article 10 of S.I. 2011/1037.

(b) 1930 c. 28. Subsection (1) of section 42 was amended by paragraph 3 of Schedule 14 to the Finance Act 1999 (c. 16) and paragraph 3 of Schedule 20 to the Finance Act 2003 (c. 14). Subsections (2A) and (2B) were inserted by section 149(3) and (7) of the Finance Act 1995 (c. 4).

- (b) a provision in a constitutional document of the joint venture company which provides for the suspension of a member's voting rights on, or as a result of, one or more of those contingencies occurring.
- (3) The contingencies referred to in subsection (1)(b) and (2) are—
- (a) the voluntary departure of a member,
 - (b) the commencement of the liquidation, administration, administrative receivership or receivership of, or the entering into of a voluntary arrangement by, a member under the Insolvency Act 1986^(a) or the Insolvency (Northern Ireland) Order 1989^(b) or the commencement, or entering into, of equivalent proceedings or arrangements under the law of any country or territory outside the United Kingdom,
 - (c) a serious deterioration in the financial condition of a member,
 - (d) a change of control of a member,
 - (e) a default by a member in performing its obligations under any agreement between the members or with the joint venture company (which, for this purpose, includes any constitutional document of the joint venture company),
 - (f) an external change in the commercial circumstances in which the joint venture company operates such that its viability is threatened,
 - (g) an unresolved disagreement between members, and
 - (h) any contingency of a similar kind to that mentioned in any of paragraphs (a) to (g) which is provided for, but not intended to happen, when the arrangements in question are entered into.
- (4) This section does not apply if a member could alone or together with connected persons dictate the terms or timing of—
- (a) the transfer of the shares or securities, or
 - (b) suspension of a member's voting rights,
- in advance of one or more of the contingencies occurring.
- (5) For the purposes of subsection (4) members are not connected with each other by reason only of their membership of the joint venture company.
- (6) In this section—
- “connected” has the same meaning as in section 1122 of the Corporation Tax Act 2010^(c);
- “constitutional document” means a memorandum of association, articles of association or any other similar document regulating the affairs of the joint venture company;
- “joint venture company” means a company which—
- (a) has two or more member companies, and
 - (b) carries on a commercial activity governed by an agreement regulating the affairs of its members;
- “member” means a holder of shares or securities in the joint venture company.

Certain mortgage arrangements not within section 42

42B.—(1) Arrangements entered into by a company which, apart from this section, would be arrangements of the kind mentioned in section 42(2) are not to be treated as such arrangements if and so long as—

(a) 1986 c. 45.
 (b) S.I. 1989/2405 (NI 19).
 (c) 2010 c. 4.

- (a) the arrangements are a mortgage, secured by way of shares or securities in the company, which on default or the happening of any other event allows the mortgagee to exercise its rights against the mortgagor, and
 - (b) the mortgagee has not exercised its rights against the mortgagor.
- (2) This section does not apply if the mortgagee—
- (a) possesses greater rights in respect of the shares or securities which are the subject of the mortgage than it requires to protect its interest as mortgagee, or
 - (b) could alone or together with connected persons dictate the terms or timing of the default or the happening of any event which allows it to exercise its rights against the mortgagor.
- (3) For the purposes of subsection (2)(b) a mortgagee is not, by reason only of the mortgage, connected with a company whose shares or securities are the subject of the mortgage.
- (4) In this section—
- “connected” has the same meaning as in section 1122 of the Corporation Tax Act 2010;
“mortgage” means—
- (a) in England and Wales, and Northern Ireland, any legal or equitable charge, and
 - (b) in Scotland, any right in security.”

5. In section 42 of the Finance Act 1930 (relief from transfer stamp duty etc), in subsection (2) (a), after “not of the transferor” insert “(but see sections 42A and 42B)”.

6. The amendments made by articles 4 and 5 have effect in relation to transfers on sale executed on or after 1 March 2013.

7. In Schedule 7 to the Finance Act 2003(b), after paragraph 2 (restrictions on availability of group relief) insert—

“Certain arrangements not within paragraph 2

2A.—(1) Arrangements entered into by a joint venture company which, apart from this section, would be arrangements to which paragraph 2 applies are not to be treated as such arrangements if and so long as—

- (a) the arrangements fall within sub-paragraph (2), and
- (b) none of the contingencies mentioned in sub-paragraph (3) to which the arrangements relate has occurred.

(2) Arrangements fall within this sub-paragraph if they are—

- (a) an agreement which provides for the transfer of shares or securities in the joint venture company to one or more members of that company on, or as a result of, one or more contingencies mentioned in sub-paragraph (3) occurring, or
- (b) a provision in a constitutional document of the joint venture company which provides for the suspension of a member’s voting rights on, or as a result of, one or more of those contingencies occurring.

(3) The contingencies referred to in sub-paragraph (1)(b) and (2) are—

- (a) the voluntary departure of a member,
- (b) the commencement of the liquidation, administration, administrative receivership or receivership of, or the entering into of a voluntary arrangement by, a member under the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989 or

(a) Subsection (2) was substituted by section 27(2) of the Finance Act 1967 (c. 54). Subsection (2) was amended by section 149(2) and (7) of the Finance Act 1995 (c. 4), and by section 123(2),(3) and (7) of the Finance Act 2000 (c. 17).

(b) 2003 c. 14

the commencement, or entering into, of equivalent proceedings or arrangements under the law of any country or territory outside the United Kingdom,

- (c) a serious deterioration in the financial condition of a member,
- (d) a change of control of a member,
- (e) a default by a member in performing its obligations under any agreement between the members or with the joint venture company (which, for this purpose, includes any constitutional document of the joint venture company),
- (f) an external change in the commercial circumstances in which the joint venture company operates such that its viability is threatened,
- (g) an unresolved disagreement between the members, and
- (h) any contingency of a similar kind to that mentioned in any of paragraphs (a) to (g) which is provided for, but not intended to happen, when the options arrangements in question were entered into.

(4) This paragraph does not apply if a member could alone or together with connected persons dictate the terms or timing of—

- (a) the transfer of shares or securities, or
- (b) the suspension of a member's voting rights,

in advance of one or more of the contingencies occurring.

(5) For the purposes of sub-paragraph (4) members are not connected with each other by reason only of their membership of the joint venture company.

(6) In this paragraph—

“connected” has the same meaning as in section 1122 of the Corporation Tax Act 2010;

“constitutional document” means a memorandum of association, articles of association or any other similar document regulating the affairs of the joint venture company;

“joint venture company” means a company which—

- (a) has two or more member companies, and
- (b) carries on a commercial activity governed by an agreement regulating the affairs of its members;

“member” means a holder of shares or securities in the joint venture company.

Certain mortgage arrangements not within paragraph 2

2B.—(1) Arrangements entered into by a company which, apart from this paragraph, would be arrangements to which paragraph 2 applies are not to be treated as such arrangements if and so long as—

- (a) the arrangements are a mortgage, secured by way of shares or securities in the company, which on default or the happening of any other event allows the mortgagee to exercise its rights against the mortgagor, and
- (b) the mortgagee has not exercised its rights against the mortgagor.

(2) This paragraph does not apply if the mortgagee—

- (a) possesses greater rights in respect of the shares or securities which are the subject of the mortgage than it requires to protect its interest as mortgagee, or
- (b) could alone or together with connected persons dictate the terms or timing of the default or the happening of any event which allows it to exercise its rights against the mortgagor.

(3) For the purposes of sub-paragraph (2)(b) a mortgagee is not, by reason only of the mortgage, connected with a company whose shares or securities are the subject of the mortgage.

(4) In this paragraph—

“connected” has the same meaning as in section 1122 of the Corporation Tax Act 2010;

“mortgage” means—

- (a) in England and Wales, and Northern Ireland, any legal or equitable charge, and
- (b) in Scotland, any right in security.”

8. In paragraph 2 of Schedule 7 to the Finance Act 2003 (restrictions on availability of group relief), in sub-paragraph (1)(a) for the third sentence substitute “For other exceptions to this, see sub-paragraph (3A) and paragraphs 2A and 2B.”

9. The amendments made by articles 7 and 8 have effect in relation to transactions with an effective date on or after 1 March 2013.

Desmond Swayne
Mark Lancaster

6th February 2013

Two of the Lords Commissioners of Her Majesty’s Treasury

(a) Sub-paragraph (1) of paragraph 2 of Schedule 7 to the Finance Act 2003 (c. 14) was amended by section 167(2) and (5) of the Finance Act 2006 (c. 25).

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 an existing HMRC extra-statutory concession (“ESC”) insofar as it applied to stamp duty, and amends statutory provisions inserted by previous Enactment of Extra-Statutory Concessions Orders (S.I. 2010/157 and S.I. 2011/1037).

This Order comes into force on 1 March 2013 and the individual articles enacting the concession or amending statutory provisions have effect, as the case may be, for disposals, payments made, transfers on sale executed or transactions entered into on or after 1 March 2013.

Article 2 replaces subsections (1) and (2) of section 248B of the Taxation of Chargeable Gains Act 1992 (c.12) (“TCGA”). The effect of these changes is to amend the method for the calculation of roll-over relief where there is an exchange of interests in land for which provision is made under sections 248A to 248D of the TCGA. These amendments are made so that sections 248A to 248D of the TCGA enact the ESC as originally intended in 2010.

Section 413A of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (“ITEPA”) relieves the payment of certain legal costs from the charge to income tax in section 403 ITEPA. Article 3 replaces the term “compromise” with “settlement” and removes the definition of compromise agreement.

Articles 4 to 9 enact Extra-Statutory Concession C10 as it was applied in practice by HMRC to stamp duty.

Articles 4 and 5 amend the Finance Act 1930 (c. 28) (“FA 1930”) to insert sections 42A and 42B. Articles 7 and 8 amend Schedule 7 to the Finance Act 2003 (c. 14) (“FA 2003”) to insert paragraphs 2A and 2B.

Section 42A of FA 1930 and paragraph 2A of Schedule 7 to FA 2003 respectively provide that section 42 of FA 1930 (relief from transfer stamp duty in case of transfer of property as between associated companies) and paragraph 2 of Schedule 7 to FA 2003 (restrictions on availability of group relief) will not apply, prior to various contingencies occurring, in relation to certain types of agreement regulating the affairs of two or more members of a joint venture company carrying on a commercial activity.

Section 42B of FA 1930 and paragraph 2B of Schedule 7 to FA 2003 respectively provide that section 42 of FA 1930 and paragraph 2 of Schedule 7 to FA 2003 do not apply, prior to a default or other event which allows the mortgagee to exercise his rights against the mortgagor, if shares or securities in a company are used as a security under a mortgage in certain situations.

In line with government commitments, a Tax Information and Impact Note has not been prepared in respect of this Order. There has been no change in policy, and there is no change to the tax, administrative or other impacts.

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STATUTORY INSTRUMENTS

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