

Extra-Statutory Concessions

Concessions as at 6 April 2013

The Civil Partnership Act (CPA) received Royal Assent on 18/11/2004 and became effective from 5 December 2005. The Government's commitment is that, for all tax purposes, same-sex couples who form a civil partnership will be treated the same as married couples.

As part of this commitment to tax parity, from 5 December 2005 all Extra Statutory Concessions (ESCs) or Statements of Practice (SoPs) should be taken as extended to apply equally to civil partners and married couples.

Introduction

This guide details the Extra-Statutory Concessions previously operated by Inland Revenue in use at 6 April 2013. Extra-Statutory Concessions previously operated by HM Customs & Excise can be found in Notice 48 at www.hmrc.gov.uk.

An Extra-Statutory Concession is a relaxation which gives taxpayers a reduction in tax liability to which they would not be entitled under the strict letter of the law. Most concessions are made to deal with what are, on the whole, minor or transitory anomalies under the legislation and to meet cases of hardship at the margins of the code where a statutory remedy would be difficult to devise or would run to a length out of proportion to the intrinsic importance of the matter.

The concessions described within are of general application, but it must be borne in mind that in a particular case there may be special circumstances which will need to be taken into account in considering the application of the concession. A concession will not be given in any case where an attempt is made to use it for tax avoidance.

Concessions which have become obsolete are not reproduced, but their titles are printed, in *italic bold* type. A concession is obsolete if it has been superseded by legislation; superseded by a later concession; contained a time-limit which has now expired; withdrawn or referred to a tax or duty which no longer applies.

The titles and text of concessions which have become obsolescent are printed in *italic type*. A concession is obsolescent if the number of potential beneficiaries cannot now increase and will diminish over time.

Abbreviations used in this guide:

CAA Capital Allowances Act

CGTA Capital Gains Tax Act

CTTA Capital Transfer Tax Act

DLTA Development Land Tax Act

FA Finance Act

F (No 2) A Finance (No 2) Act

ICTA Income and Corporation Taxes Act

IHTA Inheritance Tax Act

ITA Income Tax Act

ITEPA Income Tax (Earnings and Pensions) Act

ITMA Income Tax Management Act

ITTOIA Income Tax (trading and other Income) 2005

OTA Oil Taxation Act

TCGA Taxation of Chargeable Gains Act

TMA Taxes Management Act

References to he, him or his may equally be read as she, her or hers where appropriate.

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There are limited concessionary elements in the tax treatment of travelling and subsistence allowances paid under Working Rule Agreements and, from 6 April 1981, to site-based employees in the construction and allied industries. Further information on this tax treatment is given in an Inland Revenue Press Release dated 13 February 1981, available from the HMRC, Room 18, New Wing, Somerset House, Strand, London WC2R 1LB.

2. Inland Revenue Statements of Practice

Statements of Practice explain the Inland Revenue's interpretation of legislation and the way the Department applies the law in practice. They do not affect a taxpayer's right to argue for a different interpretation, if necessary in an appeal to the General or Special Commissioners.

Some Statements of Practice (SPs) contain a minor concessionary element. They are as follows:

SP A34 Relief for interest payments: loans for purchase or improvement of land: inherited properties

SP D1 Part disposals of land

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Inland Revenue Statements of Practice are available on the Internet at www.inlandrevenue.gov.uk

A. CONCESSIONS APPLICABLE TO INDIVIDUALS (INCOME TAX AND INTEREST ON TAX)

A1. Flat rate allowances for cost of tools and special clothing – Obsolete- Enacted in Section 367 ITEPA 2003

A2. Meal vouchers – Obsolete – Enacted in Section 89 ITEPA 2003

A3. Pensions to police officers and firemen – Superseded by A62

A4. Travelling expenses of directors and employees earning £8,500 a year or more. (See also Inland Revenue Tax Bulletin, Issue 15, February 1995, page 196.)

The general rule is that the cost to a United Kingdom resident taxpayer of travelling to and from his UK place of business is not allowable as a deduction in computing his tax liability; consequently, the full amount of an allowance paid by a company to a director or senior employee in respect of such expenses is chargeable to tax under the benefits code. The rule is modified in the following types of case:-

- (a) a director (whether whole or part time) of two or more companies within a group of parent and subsidiary or associated companies, whether or not entitled to separate remuneration from each of the companies of which he is a director, is regarded as having one place at which he normally acts as a director of companies within the group, and is entitled to a deduction (or a notice of nil liability under sect s65 of the Income Tax (Earnings and Pensions) 2003 for expenses necessarily incurred in travelling within the United Kingdom from that place to other places on the business of the group in the course of his duties as a director. The same principle is applied to an individual who is an employee of one company and a director of another company within the same group of companies. (By 'associated company' is meant a company on whose board the group is represented because of the group's shareholding or other financial interest.);
- (b) a director who gives his services without remuneration to a company not managed with a view to dividends (e.g. a company owning a hall or sports ground, or running a club) is not treated as assessable in respect of any travelling expenses paid to him;
- (c) where a directorship is held as part of a professional practice (and not, for example, because of some direct or indirect financial interest in the company), expenses incurred by the director in carrying out his duties are allowed as deductions in assessing the profits of the practice under Schedule D, whether the practice is carried on alone or in partnership. Reasonable expenses paid to the director by the company are accordingly not assessed upon the director as employment income, provided no claim is made to a deduction under Schedule D;
- (d) where a director or an employee who is paid at the rate of £8,500 a year or more goes abroad on a business journey and, although fit to carry out his

duties at his normal place of work, takes his spouse or partner with him because his health is so precarious that he cannot undertake foreign travel unaccompanied, no charge is made in respect of expenses of the wife which may be borne by the employer. 'Travelling expenses' includes in all cases reasonable hotel expenses necessarily incurred.

A5. Expenses allowances and benefits in kind – Obsolete

A6. Miners: free coal and allowances in lieu – Obsolete – Enacted in Section 306 ITEPA 2003

A7. Business or other source of income passing on the death of a husband or wife- Obsolete

A8. Loss relief for capital allowances unused on the cessation of a business - Obsolete with effect from 1997/98 with the repeal of Section 383, ICTA 1988 (Section 214(i)(b), FA 1994)

A9. Extra-Statutory Concessions: Doctors' and dentists' superannuation contributions- obsolete

A10. Lump sums paid under overseas pension schemes

Income tax is not charged on lump sum relevant benefits receivable by an employee (or by his personal representatives or any dependant of his) from an Overseas Retirement Benefits Scheme or an Overseas Provident Fund where the employee's overseas service comprises:

- (a) not less than 75% of his total service in that employment; or
- (b) the whole of the last 10 years of his service in that employment, where total service exceeds 10 years; or
- (c) not less than 50% of his total service in that employment, including any 10 of the last 20 years, where total service exceeds 20 years.

If an employee's overseas service is less than described above, relief from income tax will be given by reducing the amount of the lump sum which would otherwise be chargeable by the same proportion as the overseas service bears to the employee's total service in that employment.

In addition, income tax is not charged on lump sum relevant benefits receivable by an employee (or by his personal representatives or any dependant of his) from any Superannuation Fund accepted as being within Section 615(6), ICTA 1988.

For the purposes of this concession the term 'relevant benefits' has the meaning given in Section 612 ICTA 1988 and the term 'overseas service' shall be construed in accordance with the definition of 'foreign service' found at Section 413 (2), ITEPA 2003 [formerly paragraph 9(2) Schedule 11 ICTA 1988.

*A11. Residence in the United Kingdom: Year of commencement or cessation of residence - **Obsolete. Replaced by Schedule 45 FA 2013 from 6 April 2013***

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*A12. Double taxation relief: alimony, etc under United Kingdom court order or agreement: payer resident abroad. **Obsolete. Withdrawn with effect from 6 April 2013***

*A13. Administration of estates: deficiencies of income allowed against income of another year – **Obsolete - Rendered so by Para 4, Schedule 18, FA 1995.***

A14. Deceased person's estate: residuary income received during the administration period

A beneficiary who for a year of assessment is not resident or not ordinarily resident in the United Kingdom, and is deemed under section 657, 658(2) and 830(1), (2) Income Tax (Trading and Other income) Act 2005 ("ITTOIA") to have received income from a UK estate in that year, may claim to have their tax liability on that income from the estate adjusted to what it would be if such income had arisen to them directly and as a result they:

could claim relief under Section 278, ICTA 1988 (claim to personal reliefs by certain non residents); or

could claim entitlement to exemption in respect of FOTRA Securities issued in accordance with section 714 ITTOIA; or

could claim relief under the terms of a double taxation agreement; or

would not have been chargeable to income tax.

Relief or exemption, as appropriate, will be granted to the beneficiary only if the personal representatives of the estate:

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have made estate returns for each and every year for which they are required, and have paid all tax due and any interest, surcharges and penalties arising, and keep available for inspection any relevant tax certificates, together with copies of the estate accounts for all years of the period of administration showing details of all sources of estate income and payments made to beneficiaries.

Relief or exemption, as appropriate, will be granted to the beneficiary on a claim made within five years and ten months of the end of the year of assessment in which the beneficiary is deemed to have received the income.

No tax will be repayable to the beneficiary in respect of income they are deemed to have received where the basic amount of estate income, if received by a UK resident beneficiary of an estate, is paid sums within sections 657(3), (4) and 680(3), (4) ITTOIA.

A15. Dependent relative allowance – Obsolete

A16. Annual payments (other than interest) paid out of income not brought into charge to income tax

When a person deducts tax from annual payments (including annuities) and the payer does not have sufficient income charged to income tax to cover the payment, he has to pay the tax over to the Revenue (Sections 349(1) and 350(1) ICTA 1988).

Where

an annual payment is made in a tax year later than the one in which the payment was due to be made,

in the year it is made the payer does not have sufficient income charged to income tax to cover the payment,

the payer is an individual

but

in the year the payment was due the payer did have sufficient income charged to income tax to cover the payment,

an allowance is made, in fixing the amount to be paid over to the Inland Revenue, equal to the tax which the payer would have been entitled to deduct and keep if the payment had been made at the due dates.

If hardship would otherwise be caused, a similar allowance is made in the case of a trust or other non-trading institution not within the charge to corporation tax making such an annual payment out of the taxed income of past years.

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A17. Death of taxpayer before due date for payment of tax and other liabilities.

Obsolete. Replaced by Schedule 53, part 2, section 12 of Finance Act 2009

A18. Change of accounting basis on the merger of professional firms – Obsolete

A19. Giving up tax where there are Revenue delays in using information

Arrears of income tax or capital gains tax may be given up if they result from the Inland Revenue's failure to make proper and timely use of information supplied by:

a taxpayer about his or her own income, gains or personal circumstances

an employer, where the information affects a taxpayer's coding; or

the Department for Work and Pensions, about a taxpayer's State retirement, disability or widow's pension.

Tax will normally be given up only where the taxpayer:

could reasonably have believed that his or her tax affairs were in order, **and** was notified of the arrears more than 12 months after the end of the tax year in which the Inland Revenue received the information indicating that more tax was due, **or** was notified of an over-repayment after the end of the tax year following the year in which the repayment was made.

In exceptional circumstances arrears of tax notified 12 months or less after the end of the relevant tax year may be given up if the Revenue failed more than once to make proper use of the facts they had been given about one source of income

allowed the arrears to build up over two whole tax years in succession by failing to make proper and timely use of information they had been given.

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A20. Cessation of trade, profession or vocation – Obsolete

A21. Schedule A: deferred repairs: property passing from husband to wife (or vice versa) on death - withdrawn with effect from 6 April 1995

A22. Long service awards – Obsolete- Enacted in Section 323 ITEPA 2003

A23. Non-domiciled employees of non-resident concerns: reimbursed travelling expenses between overseas country and United Kingdom

A24. Foreign social security benefits – Obsolete – Enacted in Sections 645 & 681 ITEPA 2003

A25. Crown Servants engaged overseas – Obsolete- Enacted in Section 28 ITEPA 2003

A26. Sick benefits – Obsolete

A27. Mortgage Interest Relief: Temporary absence from mortgaged property

Under the provision of s354 and s355, ICTA 1988 tax relief for interest paid on a mortgage is given where the loan is applied for the purchase of a property which, at the time the interest is paid, is used as the only or main residence of the borrower.

Temporary absences of up to a year are in practice ignored in determining whether a property is used as an only or main residence. In addition where a person is required by reason of his employment to move from his home to another place, either in the UK or abroad for a period not expected to exceed four years, any property being purchased with the aid of a mortgage which was being used as his only or main residence before he went away, will still be treated as his only or main residence, provided it can reasonably be expected to be so used again on his return. Where a person has acquired an estate or interest in a property, for example by exchange of contracts, but is prevented by his move from occupying it as his home, he will nevertheless be regarded as having used the property as his home for the purposes of the concession. Relief will not be given beyond a period of four years but if there is a further temporary absence after the property has been reoccupied for a minimum period of three months, the four year test will apply to the new absence without regard to the previous absence.

Where a person by reason of his office or employment has moved his home abroad and that office or employment is an office or employment of the type specified in (a) of s132 (4), ICTA 1988 (certain offices and employments under the Crown), then any property being purchased with the aid of a mortgage which has been used as his only or main residence before he went away will still be treated as his only or main residence, provided it can reasonably be expected to be so used again on his return.

If an individual already on an overseas tour of duty purchases a property in the UK in the course of a leave period and uses that property as an only or main residence for a period of not less than three months before his return to the place of his overseas employment he will be regarded as satisfying the condition that the property was being used as his only or main residence before he went away.

If an individual lets his property while he is absent the benefit of the concession may be claimed, where appropriate, if this is more favourable than claiming a deduction in computing the profits or losses of a Schedule A business.

A28. Mortgage interest relief: residents of the Republic of Ireland – Rendered Obsolete by Section 81, FA 1994

A29. Farming and market gardening: relief for fluctuating profits – Obsolete – Enacted into s221 of Income Tax (Trading and Other Income) Act 2005.

A30. Interest on damages for personal injuries (foreign court awards)- Obsolete- Enacted in s751 ITTOIA 2005.

A31. Life assurance premium relief by deduction: pre-marriage policies: premium relief after divorce – Obsolete SI 2011/1037 The Enactment of Extra-Statutory Concessions Order 2011

A32. Tax relief for life assurance premiums: position of certain pension schemes which are unapproved after 5 April 1980

Sections 19(4)(b) (which allowed life assurance premium relief on certain non-qualifying policies) and 393(2)(b) (which protected the policyholder from any tax charge on policy gains) ICTA 1970 were repealed with effect from 6 April 1980 as part of the series of measures introducing the new tax code for superannuation. The result is that premium relief may not be available for 1980/81 and future years and there may be a charge to tax on the surrender etc of the policy. In order to continue the protection afforded by these provisions the Inland Revenue will continue to give relief as though they were still in force. The concession will not apply in the case of a policy issued in connection with a retirement benefit scheme established after 5 April 1980.

A33. Lump sum retirement benefits: changes after 5 April 1980- Superseded by SI 2009/730

A34. Ulster savings certificates: certificates encashed after death of registered holder – Enacted in section 693 ITTOIA 2005

A35. Mortgage interest relief: year of marriage- Obsolete. Superseded from 16 March 1993 by Section 57 FA 1993

A36. Close companies in liquidation: distributions in respect of share capital – Obsolete as this relates to close company apportionment rules abolished by FA 1989

A37. Tax treatment of directors' fees received by partnerships and other companies

1.

Where fees are received in respect of directorships held by members of a professional partnership they are in strictness assessable on the individual partners as employment income. It is however the practice of HM Revenue & Customs (HMRC) to accede to a request from the partnership for the inclusion of the fees as receipt of the profession provided that –

- (a) the directorship is a normal incident of the profession and of the particular practice concerned;
- (b) the fees are only a small part of the profits; and
- (c) under the partnership agreement the fees are pooled for division among the partners.

Partnerships seeking such treatment are expected to provide HMRC with a written undertaking that directors' fees received in full will be included in the gross income or receipts of the basis period, whether or not the directorship is still held in the year of assessment and whether or not the partner concerned is still a partner.

2. It is also the practice of HMRC that, where a company has the right to appoint a director to the board of another company, by virtue of its shareholdings in, or a formal agreement with, the second company then, provided the director is required to hand over to the first company any fees or other earnings received in respect of his directorship with the second company and does so, and the first company is chargeable to corporation tax and agrees to accept liability on the fees, those fees are treated as income of the company and not of the director, and tax is not deducted from the fees under PAYE. Where the first company is chargeable not to corporation tax but to income tax (for example, if it is a non-resident company not trading through a branch or agency in the United Kingdom) and agrees to accept liability, tax is deducted at the basic rate of income tax from the fees.

3. With effect from 6 April 1980, the practice described in the previous paragraph will be extended to the case where the first company has no formal right to appoint the director to the board but the director is nevertheless required to (and does) hand over his fees to that company, provided it is -

- (a) a company resident in the United Kingdom liable to United Kingdom corporation tax or, if non-resident, is trading through a branch or agency in the United Kingdom so that its income is chargeable to corporation tax under Section S11 ICTA 1988 and the fees are included in that income; and

(b)

not a company over which the director has control. (For this purpose 'control' has the meaning given to it by section 840 ICTA 1988, but in determining whether the company is controlled by the director the rights and powers of his spouse or civil partner, his children and their spouses or civil partners and his parents will also be taken into account.)

A38. Retirement annuity relief: death and disability benefits

Where an individual is treated as in pensionable employment solely because provision is made under a scheme or arrangement existing on 14 October 1980, fully or partly at the cost of the employer, for a benefit in pension form payable only on death or disability, the employment will be treated as non-pensionable for any tax year in which the individual has not become entitled to benefit as a result of that provision. In accordance with the provisions of Section 619(4), ICTA 1988, the individual will be entitled to pay a retirement annuity premium in the following tax year and, within that same year to elect to have it related back for tax purposes to the previous year, and set against the earnings from the employment for that year subject to the limits on relief in force.

Relief will be available on a year to year basis for the period of employment or until benefit becomes payable as a result of death or disability. The employment in the tax year in which such a contingency occurs will be regarded as pensionable and retirement annuity relief will not be available for that year, but no attempt will be made to recover retirement annuity relief already given for earlier years in the same employment.

A39. Exemption for Hong Kong officials: extension of Section 320, ICTA 1988 relief – replaced with effect from 1 July by the Hong Kong Economic and Trade Office (Exemptions and Reliefs) Order (SI 1997 No 1334)

A40. Adoption allowances payable under The Adoption Allowance Regulations 1991 and Section 51, Adoption (Scotland) Act 1978

Income tax is not charged on adoption allowances paid under the provisions of The Adoption Allowance Regulations 1991 or schemes approved by the Secretary of State for Scotland under Section 51, Adoption (Scotland) Act 1978.

A41. Qualifying life assurance policies: statutory conditions

Life assurance policies which contain minor technical infringements of the qualifying conditions in Schedule 15, ICTA 1988 cannot strictly be treated as qualifying. Similarly, under paragraph 21(1), Schedule 15, ICTA 1988, policies in respect of insurances made on or after 1 April 1976 (or varied on or after that date) are not qualifying policies unless they have been certified as such by the Board, or conform to a certified standard form.

In certain circumstances, the Board may be prepared by concession to relax the strict statutory conditions. These relaxations are as follows:

- a. where, under paragraph 1(8), Schedule 15, ICTA 1988, the commencement date of a policy is back-dated by not more than three months, for the purposes

of testing varied or substituted policies under paragraph 17(2) of the same Schedule, calculating the chargeable event period under Section 540(1), ICTA 1988, and applying the 'clawback' provisions of Sections 268 to 270, ICTA 1988, the earlier date will be treated as the date on which the assurance is made;

b. a reduction in premium level in the first year of a policy will not be regarded as a significant variation, provided that the reduction leads to an appropriate reduction in the sum assured and that any excess of premium is used to pay further premiums within the first year of the policy or returned to the policy holder or retained by the insurer, with no value being credited to the policyholder;

c. certain trivial infringements of the qualifying rules may be disregarded. In such cases, the insurer will be required to give written confirmation that all reasonable steps have been taken to ensure that such errors will not be repeated; and

d.

a policy in respect of an insurance made on or after 1 April 1976 (or varied on or after that date) which has not been certified by the Board, but which is capable of certification, may be certified as a qualifying policy from the date when the insurance was made (or the policy varied) and any premium relief already given will normally not be recovered. Uncertified policies which are not capable of being certified will normally be regarded as non-qualifying policies from commencement or, where appropriate, the time at which uncertifiable wording was added.

A42. Chargeable events: loans to policyholders – Obsolete

A43. Interest relief: Investments in partnerships, co-operatives, close companies, and employee-controlled companies

1. Under Sections 360-363, ICTA 1988, income tax relief is available for interest paid by an individual on a loan taken out to invest in, or on-lend to, a partnership, a co-operative, a close company, or an employee-controlled company. The relief is subject to various conditions, and ceases to be available when those conditions are no longer met.

2. Relief is also reduced or withdrawn (following Section 363) if the borrower recovers any capital from the business without using it to repay the loan - for example by selling or exchanging the interest or shares in that business. Strictly, therefore, relief ceases to be due where:

(a) a partnership is incorporated into a co-operative, a close company, or an employee-controlled company; or

(b) shares in a co-operative, a close company, or an employee-controlled company are exchanged for, or replaced by, shares in any one of these kinds of company; or

(c) there is a partnership reconstruction involving a merger or demerger.

3. Under the terms of this concession, relief for interest on a loan to an individual will not be discontinued in the three kinds of circumstances described above where, in relation to that individual, the conditions for relief would have been met if the loan had been a new loan taken out by that person to invest in the new business entity. The rules restricting or withdrawing relief where the borrower recovers any capital from the business continue to apply in the normal way.

A44. Education allowances under Overseas Service Aid Scheme

Income tax will not be charged on certain education allowances payable to officers in the public service of certain overseas territories where, as part of an agreement under the Overseas Service Aid Scheme, the United Kingdom Government has undertaken to exempt such allowances from United Kingdom income tax.

A45. Life assurance policies: variation of term assurance policies - Obsolete - withdrawn 9 December 2010

A46. Variable purchased life annuities: carry forward of excess of capital element - SEE C 35

This Concession was legislated as section 719(5) of ITTOIA 05 for individuals and now only applies where the annuity is held by a company.

A47. House purchase loans made by life offices to staffs of insurance associations - Obsolete - withdrawn 9 December 2010

A48. Transfer of control and management of a partnership outside the United Kingdom - Obsolete

A49. Widow's pension paid to widow of Singapore nationality, resident in the United Kingdom, whose husband was a United Kingdom national employed as a Public Officer by the Government of Singapore

Section 614 & 615 ICTA 1988 exempts from tax certain overseas pensions, including pensions paid by the United Kingdom Government to non-residents in respect of public service with the governments of former colonies. Section 616 ICTA 1988 extends this relief to United Kingdom residents, in receipt of pensions transferred to the care of the United Kingdom Government, by the Governments of Zambia, Malawi and Trinidad and Tobago. This sub-section should be extended to exempt from tax widows' pensions paid to widows of Singapore nationality, who are resident in the United Kingdom and whose husbands were United Kingdom nationals employed in the service of the Government of Singapore.

A50. Job Release Scheme - Obsolete

A51. Repayment supplement: life assurance premium relief - Obsolete SI 2011/ 1037 The Enactment of Extra-Statutory Concessions Order 2011

A52. Maintenance payments: concessionary relief - Obsolete

A53. Stock relief: business passing on the death of a trader - Obsolete

A54. Members of Parliament: Accommodation allowances and expenses - Obsolete

A55. Arrears of foreign pensions - Obsolete - Enacted in Sections 575 (2) (C) and 613 (3). (C) ITEPA 2003

A56. Benefits in kind: the tax treatment of accommodation in Scotland provided for employees

1. Section 102 of (ITEPA) charges to tax in certain circumstances the benefit of living accommodation provided by reason of a person's employment. The charge is based either on the rent paid by the person providing the accommodation, or the property's 'annual value' if greater, less any amount made good by the employee.
2. Annual value is defined in Section 110 ITPA 2003 in terms similar to the definition of 'gross value' for rating purposes in the General Rate Act 1967. In practice, therefore, a property's gross rateable value may be taken as its annual value for Sections 105 & 106 ITEPA purposes where the property is situated in the United Kingdom.
3. To avoid unfairness as between taxpayers in different parts of the United Kingdom, the Inland Revenue will not assess the benefit arising on property in Scotland in accordance with the 1985 Scottish rating revaluation figures.
4. Instead, the existing 1978 valuations will form the basis of assessment for existing properties for 1985/86 and 1986/87. For 1987/88 and subsequent years and for new properties the Inland Revenue will scale back the 1985 figures by the average increase in rateable values in Scotland between 1978 and 1985 (170 per cent); (e.g. a 1985 gross rateable value of £270 will be reduced to £100 for the purposes of Section 33).
5. Additional yearly rent which is required for properties costing over £75,000 by Section 106(2) Step 2 of ITEPA is unaffected.

A57. Suggestion Schemes – Obsolete – Enacted in Sections 321 and 322 ITEPA 2003

A58. Travelling and subsistence allowance when public transport disrupted – Obsolete- Enacted in Section 245 ITEPA 2003

A59. Disabled persons ‘home to work travel’- Obsolete Enacted in Sections 246 and 247 ITEPA 2003

A60. Agricultural workers' board and lodgings – Obsolete – withdrawn with effect from 1 April 2010

A61. Clergymen's heating and lighting etc expenses – Obsolete (SI 2010/157 - The Enactment of Extra-Statutory Concessions Order 2010)

A62. Pensions to employees disabled at work – Obsolete – Enacted in Section 644 ITEPA

A63. External training courses – expenses borne by employer. Obsolete – Replaced by Section 200B-D, ICTA 1988

A64. External training courses – expenses borne by employee – Rendered obsolete following the roll out of the national framework of Individual Learning Accounts – Obsolete

A65. Workers on offshore oil and gas rigs or platforms: free transfers from or to mainland – Obsolete – Enacted in Section 305 ITEPA 2003

A66. Payments for employees journeys home: late night travel and breakdown in car sharing arrangements – Obsolete – Enacted in Section 248 ITEPA 2003

A67. Payments to employees moved to higher cost housing areas. Obsolete

A68. Payments out of a discretionary trust which are taxable as Employment Income Obsolete (SI 2010/157 - The Enactment of Extra-Statutory Concessions Order 2010)

A69. Building Societies: conversion to company status

When a building society converts to company status under the Building Societies Act 1986, certificates of non-liability to tax and declarations by investors given or made prior to conversion which satisfy the conditions of the Income Tax (Building Societies) (Dividends and Interest) Regulations 1990, will be treated as having been given or made to the successor company.

A70. Small gifts to employees by third parties and staff Christmas parties – Obsolete – Enacted in Sections 264, 270 and 324 ITEPA 2003

A71. Company cars: family members and shared use – Obsolete – Enacted in Sections 148 and 169 ITEPA 2003

A72. Pension schemes and accident insurance policies – Obsolete – Enacted in Section 307 ITEPA 2003

A73. Lloyd's Underwriters: Repayment of tax withheld where there is an overall loss - Obsolete

A74. Meals provided for employees – Obsolete – Enacted in Sections 266 & 367 ITEPA 2003

A75. Theatrical entertainers

The earnings of theatrical entertainers were before 6 April 1990 generally taxed under Schedule D. But ‘standard contracts’, which are widely used for theatrical engagements are generally contracts of employment and the earnings from them are properly taxable under employment income. From 6 April 1990 earnings from engagements under “standard contracts”, which are contracts of employment, and from other contracts of employment, are taxed as employment income except where a theatrical entertainer can claim reserved trading income (formerly Schedule D) status in accordance with the conditions below. In such cases income from theatrical performances, under “standard contracts” or under any other contract of employment, will continue to be taxed as trading income.

Entertainers qualify for reserved trading income status where one of the following conditions is satisfied

either

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Schedule D assessments have been made in respect of income from engagements as a theatrical entertainer for at least the three tax years

1986-87, 1987-88 and 1988-89, and an assessment for at least one of those years has been based on accounts or a return of income for that year submitted before 31 May 1989

or

- Schedule D assessments have been made in respect of income from engagements as a theatrical entertainer for at least three of the years 1979-80 to 1988-89 provided that

- there has been a satisfactory history of Schedule D treatment

and

- accounts or returns of income for all relevant years up to and including 1986-87 were submitted before 31 May 1989

and

- the entertainer's last theatrical engagement which started before 6 April 1990 was dealt with under Schedule D (whether or not it ended before that date).

These conditions mean that a theatrical entertainer starting in the profession after 5 April 1987 cannot qualify for reserved trading income status.

Entertainers qualifying for reserved trading income status will only be assessed under Schedule D so long as they continue to meet their tax obligations satisfactorily, and continue their professional activities without a break. If, following a break, professional activities are resumed, Employment income treatment will apply to any income from a contract of employment.

For the purposes of this concession

- 'standard contract' means a standard contract agreed between theatrical employers and the British Actors Equity Association (Equity)

- 'theatrical entertainer' means an actor, singer, dancer, musician or other theatrical entertainer, and includes stage managers

- "break" in professional activities means a cessation agreed under the trading income rules between the HM Revenue & Customs and the theatrical entertainer.

This concession was announced, in a letter to Associations representing theatrical entertainers and employers, on 25 June 1989.

A76. Business Expansion Scheme and Enterprise Investment Scheme: subscriber shares – Obsolete – Included at Section 291 B (5A) ICTA 1988

A77. Motor mileage allowances paid to volunteer drivers - withdrawn with effect from 6 April 1995

A78. Residence in the United Kingdom: accompanying spouse - Obsolete. Replaced by Schedule 45 FA 2013 from 6 April 2013

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A79. Tax Exempt Special Savings Accounts (TESSAs) – Obsolete

A80. Blanket partnership continuation elections – Obsolete

A81. Termination payments and legal costs – Obsolete – legislated in section 413A of the Income Tax (Earnings and Pensions) Act 2003

A82. Repayment supplement to individuals resident in EC member states—legislated in paragraph 41 Schedule 19 FA 1994

A83. Benefits under permanent health insurance policies - Rendered obsolete by Section 580A ICTA 1988 from 6 April 1996.

A84. Allowances paid to Detached National Experts –Obsolete – Enacted in Section 304 ITEPA 2003

A85. Transfers of assets by employees and directors to employers and others (See also Inland Revenue Tax Bulletin, Issue 16, April 1995) – Obsolete – Enacted in Section 326 ITEPA 2003

A86. Blind person's allowance

When a person becomes entitled to the blind person's allowance by being included on a register compiled under Section 29 of the National Assistance Act 1948, then he or she shall (subject to the normal time limits for claims) also be given the blind person's allowance for the previous year if, at the end of that previous year, he or she had already obtained evidence of blindness (such as an ophthalmologist's certificate) upon which the registration was subsequently based.

A87. Loss relief on accounts basis – Obsolete

A88. Cessation adjustment where loss relief has been allowed on accounts basis – Obsolete

A89. Mortgage interest relief: Property used for residential and business purposes

Where tax relief for interest paid on a loan to buy the borrower's home is given under the provisions of S353, ICTA 1988 no deduction is allowed for any of the interest on the loan in a computation of profits or losses for the purposes of a Schedule A or Schedule D Case I or II business (see S368 (4)). Conversely, where a deduction is allowed under Schedule A or Schedule D Case I or II no relief can be claimed under S353 (see Section 368(3)). By concession, however, relief for interest on a loan to buy a property used for both residential and business purposes in the circumstances set out below may be allowed in part under S353 and in part as a deduction in computing profits or losses.

Similarly, where tax relief for interest paid on a loan to buy the borrower's home is given under the provisions of S369, ICTA 1988 - the mortgage interest relief at source (MIRAS) arrangements - no deduction is allowed for any of the interest on the loan in a computation of profits or losses for the purposes of a Schedule A or Schedule D Case I or II business (see S369 (3)). By concession, however, relief for interest on a loan to buy property used for both residential and business purposes in the circumstances set out below may be allowed in part under the MIRAS arrangements and in part as a deduction in computing profits or losses, provided the interest on the loan is 'relevant loan interest' within the terms of S370.

The circumstances in which this concession applies are as follows.

Where a part of a property, which is the borrower's only or main residence, is used exclusively for business purposes the loan in question may be apportioned on the basis of the proportion of the property so used. Mortgage interest relief may then be claimed for the interest on the part of the loan attributable to residential use and a deduction may be allowed for the interest on the part of the loan attributable to business use.

Where a part of a property, which is the borrower's only or main residence, is only sometimes used for business purposes (but for a significant amount of time and then exclusively) the loan in question may be apportioned on any reasonable basis that takes account of both the proportion of the property so used and the duration of such use. Mortgage interest relief may then be claimed for the interest on the part of the loan attributable to residential use and a deduction may be allowed for the interest on the part of the loan attributable to business use.

A90. Jobmatch pilot scheme- Obsolete

A91. Living accommodation provided by reason of employment

This concession applies to living accommodation treated as earnings under Part 3, Chapter 5 ITEPA 2003. Where Section 106 ITEPA 2003 applies and the cash equivalent of the benefit of the accommodation is calculated by reference to the annual rent the property might fetch on the open market, the Inland Revenue will disregard 'additional yearly rent'. If 'the additional yearly rent' is disregarded then the amount of 'the excess rent' is deemed to be nil.

A92. Tax Exempt Special Savings Accounts (TESSAs): European authorised institutions – Obsolete

A93. Payments from offshore trusts to minor, unmarried child of settlor: Claim by settlor for credit of tax paid by trustees

Income arising to a trust within the scope of Section 686 ICTA 1988 is charged to tax on the trustees at the rate applicable to trusts or the Schedule F trust rate. Where such income is distributed to or for the benefit of an unmarried minor child, of the settlor, it is treated as the income of the settlor and becomes chargeable on them for the year in which it is distributed under Section 660B ICTA 1988.

Section 687 ICTA 1988 provides for the settlor of a resident trust to be given full credit against tax due from them under Section 660B for tax paid by the trustees at the rate applicable to trusts in respect of income distributed. Section 687 does not, however, apply where the trustees exercise their discretion outside the UK. The settlor of such a trust could therefore be liable to tax under Section 660B without being able to claim credit against their liability for any tax paid by the trustees.

By concession, the settlor will be able to claim credit against their liability to tax under Section 660B for tax paid by the trustees, as if the payments out of UK income were from a UK resident trust. This will apply to the extent that the distribution is made out of income which arose to the trustees not earlier than 6 years before the end of the year of assessment in which the distribution was paid.

For this purpose, the distribution will be treated as having been made rateably out of the total of the various sources of income arising to the trustees on a last in first out basis. Credit will be given to the settlor for the tax paid by the trustees on the income to the extent that:

the distribution is regarded as being made from income chargeable to UK tax; and such income has not previously been allocated to earlier distributions on a last in, first out basis.

This concession will only apply where the trustees:

have made trust returns, giving details of all sources of trust income and payments made to beneficiaries for each and every year for which they are required; and have paid all tax due, and any interest, surcharges and penalties arising; and keep available for inspection any relevant tax certificates.

Credit will be granted to the settlor on a claim made within five years and ten months of the end of the year of assessment in which the beneficiary received the payment from the trustees.

No credit will be given for UK tax treated as paid on income received by the trustees which would not be available for set-off under Section 687(2) if that section applied, and that tax is not repayable (for example on dividends). However, such tax is not taken into account in calculating the gross income treated as taxable on the settlor under this concession.

A94. Profits and losses of theatre backers (Angels)

An individual who backs a theatrical production, except where such backing activity forms part of a trade or profession within the theatre industry, is a theatre 'angel'. If the show is successful, the money is first repaid, and then the angel receives a share of any profit. If the show fails, the angel may lose not only the hope of a return on the money but also all or part of the original investment. Any return a theatre angel receives over and above the original investment is strictly assessable under section 683 of Income Tax (Trading and Other Income) Act 2005, and the CGT rules apply to losses.

Despite the strict rules, UK resident angels may, in respect of any particular transaction, treat profits under section 687 of Income Tax (Trading and Other Income) Act 2005, and losses under section 872 of Income Tax (Trading and Other Income) Act 2005. Where this concessionary treatment is given, any loss in respect of that transaction cannot also qualify as a capital loss.

Unincorporated payers who make payments liable under section 683 of Income Tax (Trading and Other Income) Act 2005 have the right, but usually no obligation, to deduct tax. Incorporated payers will always have an obligation to deduct tax. The Revenue will not however insist on deduction of tax from payments to theatre angels for their theatrical investments if the angel's usual place of abode is in the United Kingdom. Payers who do exercise their right to deduct tax under Section 349(1) of the Income and Corporation Taxes Act 1988 must account to the Inland Revenue for the tax.

A95. Small lump sum retirement benefits schemes

Where a person:

has paid contributions in, or for, any year of assessment to a retirement annuity contract or to a personal pension scheme out of emoluments chargeable to tax as employment income under Part 2 of the Income Tax (Earnings and Pensions) Act 2004 from an office or employment, or out of income from any property which is attached to or forms part of those general earnings; and

has, for the same year of assessment and in respect of the same office or employment accrued lump sum retirement benefits under a relevant lump sum retirement benefits scheme;

any tax relief given for the contributions paid by that person to the retirement annuity contract or personal pension scheme will not be withdrawn provided that, under the rules of the relevant lump sum retirement benefits scheme, for the period in question:

he or she waives entitlement to the lump sum retirement benefits; or

no lump sum retirement benefits accrue; and

the retirement annuity contract or the arrangements under the personal pension scheme are not cancelled.

For these purposes a relevant lump sum retirement benefits scheme means a retirement benefits scheme which is approved as an exempt approved scheme under Chapter I Part XIV ICTA 1988; and

under the rules of which the only benefit which may be provided on retirement (other than benefits from any additional voluntary contributions) is a lump sum which does not exceed £400 for each year of pensionable service; and

whose rules provide for no such lump sum to accrue (or for that lump sum to be waived) in respect of any period for which the person has paid contributions to a retirement annuity contract or to a personal pension scheme.

References to contributions paid by a person should be taken to include any made by an employer (for the benefit of that person) to a personal pension scheme.

A96. Old life insurance policies: Insurer stopping collection of premiums – Obsolete - Enacted into s 488 489 of ITTOIA 05

A97. Jobmatch Programme

Income tax is not charged on payments made under the Department for Education and Employment's Jobmatch programme, nor in respect of training vouchers received by participants under the terms of the programme.

A98. Cessation adjustments under Self Assessment transitional rules--Obsolete.

A99. FSA/PIA review of sales of Freestanding Additional Voluntary Contributions Schemes (FSAVCS): Tax treatment of compensation

1. The Financial Services Authority/Personal Investment Authority (FSA/PIA) issued a Policy Statement on 28 February 2000 which required a review of specified categories of FSAVCS sold during the period beginning with 28 April 1988 and ending with 15 August 1999. Guidance for the performance of the review was issued by the FSA.

2. A payment within paragraph '3' below which is made as a result of a review of an FSAVC covered by the FSA/PIA Policy Statement and FSA Guidance will not be chargeable to income tax. Nor will the receipt of such payment be regarded for the purposes of capital gains tax as the disposal of an asset.

3. (a) The payment is a capital sum by way of compensation which has been determined in accordance with the FSA Guidance for the performance of the review.

(b) The payment is interest on the whole or part of the capital sum described at 'a' for a period ending on or before the earliest date on which the capital sum was determined.

A100. Tax exemption for compensation paid on bank accounts owned by holocaust victims.

Under income tax law, compensation payments made in respect of dormant bank and building society accounts normally represent interest, and are therefore strictly subject to the Tax Deduction Scheme for Interest. That means such interest would generally be paid by a bank or building society net of tax to an individual investor unless the individual - is a UK non taxpayer and has completed a registration form R85 to that effect and handed it to his or her bank or building society; or is not ordinary resident in the UK and a declaration to that effect on form R105 has been obtained by the bank or building society.

Furthermore, death duties (estate duty, capital transfer tax, or inheritance tax, as appropriate) are potentially chargeable on UK account balances at death (even if the account holder had no other UK connection).

Under an initiative called "Restore UK", and announced on 8 May 2000 by the British Bankers' Association, compensation is being paid by banks on unclaimed accounts opened by Holocaust victims and frozen during World War II under the Trading with

the Enemy Act 1939. Where the investor of the monies in the unclaimed account was a Holocaust victim, the banks have said they will make an exceptional up-rating payment. No tax will be payable on any monies paid out by banks or building societies under the "Restore UK" initiative to Holocaust victims or their beneficiaries. This exemption will cover income tax liabilities on any compensation payments made on or after 8 May 2000 under the scheme, as well as death duties in respect of the capital held in the accounts.

A101. Personal pension schemes: tax relief for contributions.

1. Section 639 of the Income and Corporation Taxes Act 1988 (ICTA) provides the rules for giving tax relief on members' contributions to approved personal pension schemes. It has been amended by paragraph 15 of Schedule 13 to the Finance Act 2000 for contributions made in the tax year 2001-02 and subsequent tax years. The new subsection (3) of Section 639 provides for a member to obtain relief at the basic rate by deducting from his or her payment to the scheme administrator an amount equal to basic rate tax on the payment. The new subsection (5A) provides that the basic rate limit is increased by the amount of the payment where the member

- (a) is liable to income tax at the higher rate on any income for the tax year in which the payment is made, or
- (b) would be so liable if the adjustment were not made.

The consequence is that an additional amount of income is charged at the basic rate instead of the higher rate, so that the member obtains relief at the higher rate on some or all of the payment.

2. The rules in Section 639 as amended do not, however, provide for any relief to be obtained on the payment at the higher rate where the member, although not liable to any income tax at the higher rate in the tax year in question, would be liable to some capital gains tax at the higher rate in that year. This will happen in any case where the member's income is below the basic rate limit, but some capital gains tax would be charged at the higher rate in accordance with Section 4 of the Taxation of Chargeable Gains Act 1992. In order that these members should not be disadvantaged by the new rules, the adjustment to the basic rate limit provided by Section 639(5A) ICTA will also apply in respect of any member who

- (a) is liable to capital gains tax at the higher rate on any chargeable gains for the tax year in which the payment in question is made, or
- (b) would be so liable if the adjustment were not made.

A102. Contributions to approved personal pension plans from 6 April 2001 under Section 639 ICTA 1988 and age related allowances

Schedule 13 FA 2000 amended the rules by which someone obtains tax relief on contributions to approved personal pension schemes. As a result of the changes a deduction is no longer given in arriving at total income. This affects the level of an individual's income which determines the age related personal and married couple's allowances.

This concession allows such contributions from 6 April 2001 to reduce an individual's total income for the purposes only of determining the level of age related allowances available under Sections 257(5) and 257A(5) ICTA 1988.

A103. Armed Forces Reservists: Revenue Approved Share Schemes and Enterprise Management Incentives (EMI)

Where a reservist is called up for service under the Reserve Forces Act 1996, the Inland Revenue by concession will treat the employment with the Ministry of Defence (MOD) as fulfilling the employment conditions for Inland Revenue approved employee share schemes*

By concession, employers and scheme providers will also be allowed to take such action as is necessary to maintain a reservist's participation in an approved employee share scheme, for the period they are away serving with the MOD and this action will not compromise the approval of the scheme.

*For the purposes of this ESC Inland Revenue approved employee share schemes include, Company Share Option Plans, Share Incentive Plans, Save as you Earn Schemes and Enterprise Management Incentives.

The concession applies from 7th January 2003.

A104. Removal of double counting of costs relating to car and car fuel benefits in calculating total earnings for the £8,500 benefits threshold.-obsolete

**B. CONCESSIONS APPLICABLE TO INDIVIDUALS AND COMPANIES
(INCOME TAX AND CORPORATION TAX)**

B1. Machinery or plant: changes from ‘renewals’ basis to capital allowances basis

Expenditure on machinery or plant which has been the subject of a ‘renewals’ deduction does not technically qualify as capital expenditure for the purpose of capital allowances (Section 4(2), CAA2001). Taxpayers who change from the ‘renewals’ to the capital allowances basis are, however, permitted to claim such allowances as if the expenditure did so qualify provided that where they use more than one item of a class of machinery or plant they change from the ‘renewals’ basis to the capital allowances basis for all the items in that class.

B2. Capital allowances for agricultural buildings and works – Obsolete

*B3. Industrial buildings allowances: private roads on industrial trading estates -
Obsolete*

*B4. Maintenance and repairs of property obviated by alterations etc: Schedule A
assessments - Obsolete*

*B5. Maintenance expenses of owner-occupied farms not carried on a commercial basis
– Obsolete.*

B6. Deficiency payments in respect of home-grown cereals – Obsolete

*B7. Benevolent gifts by traders – Obsolete – withdrawn with effect from 9 December
2010*

B8. Double taxation relief: income consisting of royalties and ‘know-how’ payments

Payments made by a person resident in an overseas country to a person carrying on a trade in the United Kingdom as consideration for the use of, or for the privilege of using, in the overseas country any copyright, patent, design, secret process or formula, trade-mark or other like property may in law be payments the source of which is in the United Kingdom, but are nevertheless treated for the purpose of credit (whether under double taxation agreements or by way of unilateral relief) as income arising outside the United Kingdom except to the extent that they represent consideration for services (other than merely incidental services) rendered in this country by the recipient to the payer.

B9. Bank interest etc received by charities – Obsolete

B10. Income of contemplative communities or of their members – Obsolete (SI 2010/157 - The Enactment of Extra-Statutory Concessions Order 2010)

B11. Compensation for compulsory slaughter of farm animals – Obsolete (SI 2012/266 – The Enactment Extra-Statutory Concessions Order 2012)

B12. Income from abroad assessable on the remittance basis: compulsory remittances to the United Kingdom under the Exchange Control Acts - Obsolete

B13. Untaxed interest paid to non-residents – Obsolete

B14. Capital allowances on replacement of motor cars – Obsolete

B15. Borrowing and lending of securities – Obsolete

B16. Fire safety: capital expenditure incurred on certain trade premises (a) in Northern Ireland, and (b) by lessors

Section 29, CAA 2001, provides tax relief (in circumstances where it is not otherwise available) for capital expenditure incurred by traders in meeting the requirements of a fire authority under Section 5(4), Fire Precautions Act 1971, following an application for a fire certificate in respect of trade premises of a type designated under that Act. Section 29 also provides relief for capital expenditure incurred by traders in meeting the requirements of a Court Order which could be made under Section 10, Fire Precautions Act, prior to its amendment by Section 9, Fire Safety and Safety of Places of Sport Act 1987.

(a) Northern Ireland

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The Fire Precautions Act 1971 does not apply in Northern Ireland, and consequently the provisions of Section 29 do not apply to any expenditure on fire safety incurred on trade premises in Northern Ireland. In practice, however, tax relief is given in respect of such expenditure, on the same basis as in Great Britain, where it has been incurred: -

- a. in respect of a building falling within one of the classes of premises which have been designated under Section 1, Fire Precautions Act 1971;
- b. on or after the date on which the designation order for the class of premises came into operation;
- c. in respect of a building which is not a new building or an extension to an existing building; and
- d. in meeting the requirements of a fire authority under legislation applying in Northern Ireland which corresponds to those provisions of the Fire Precautions Act 1971 under which a fire certificate is required in Great Britain. Examples of such legislation are Section 29, Office and Shop Premises Act (Northern Ireland) 1966 (offices and shops with more than a certain number of employees) and Section 11, Fire Services Act (Northern Ireland) 1969 (hotels and boarding houses above a certain size); and Article 26 of the Fire Service (Northern Ireland) Order 1984.

Relief is also given, on a similar basis, in respect of expenditure in meeting the requirements of a Court Order made under provisions corresponding to those of Section 10, Fire Precautions Act 1971 prior to its amendment by Section 9, Fire Safety and Safety of Places of Sport Act 1987 (e.g. Article 33 of the Fire Services (Northern Ireland) Order 1984 prior to its amendment by Article 12 of The Fire Services (Amendment) (Northern Ireland) Order 1993).

Where the expenditure qualifies for relief under Section 271, CAA 2001 (hotel buildings allowance) it may nevertheless be treated as above provided the taxpayer renounces his entitlement to relief under that section.

(b) Lessors

Under Section 538, CAA 2001, relief is given to lessors who make contributions towards their tenants' or licence's' fire safety expenditure, provided the expenditure satisfies the conditions of Section 29, CAA 2001 or, in relation to Northern Ireland, the conditions set out above. In practice, relief is also allowed where the lessor incurs the expenditure himself, if similar expenditure by the tenant or licensee would have qualified for relief.

B17. Capital allowances: sale of invented patent to an associate – Obsolete

B18: Payments out of discretionary trusts

UK Resident Trusts

A beneficiary may receive from trustees a payment to which Section 687(2) ICTA 1988 applies. Where that payment is made out of the income of the trustees in respect of which, had it been received directly, the beneficiary would have been entitled to exemption in respect of FOTRA Securities issued in accordance with Section 154 FA 1996; or have been entitled to relief under the terms of a double taxation agreement; or not have been chargeable to UK tax because of their not resident and / or not ordinarily resident status the beneficiary may claim that exemption or relief or, where the beneficiary would not have been chargeable, repayment of the tax treated as deducted from the payment (or an appropriate proportion of it). For this purpose, the payment will be treated as having been made rateably out of all sources of income arising to the trustees on a last in first out basis.

Relief or exemption, as appropriate, will be granted to the extent that the payment is out of income which arose to the trustees not earlier than six years before the end of the year of assessment in which the payment was made, provided the trustees: have made trust returns giving details of all sources of trust income and payments made to beneficiaries for each and every year for which they are required, and have paid all tax due, and any interest, surcharges and penalties arising, and keep available for inspection any relevant tax certificates.

Relief or exemption, as appropriate, will be granted to the beneficiary on a claim made within five years and ten months of the end of the year of assessment in which the beneficiary received the payment from the trustees.

Non-resident trusts

A similar concession will operate where a beneficiary receives a payment from discretionary trustees which is not within section 687(2) ICTA 1988 (i.e. where non-resident trustees exercise their discretion outside the UK).

Where a non-resident beneficiary receives such a payment out of income of the trustees in respect of which, had it been received directly, it would have been chargeable to UK tax, then the beneficiary

may claim relief under Section 278 ICTA 1988 (personal reliefs for certain non-residents); and

may be treated as receiving that payment from a UK resident trust but claim credit only for UK tax actually paid by the trustees on income out of which the payment is made.

The beneficiary may also claim exemption from tax in respect of FOTRA Securities issued in accordance with Section 154 FA 1996 to the extent that the payment is regarded as including interest from such securities.

A UK beneficiary of a non-resident trust may claim appropriate credit for tax actually paid by the trustees on the income out of which the payment is made as if the payments out of UK income were from a UK resident trust and within Section 687(1) ICTA 1988.

This treatment will only be available where the trustees:

have made trust returns giving details of all sources of trust income and payments made to beneficiaries for each and every year for which they are required, and

have paid all tax due and any interest, surcharges and penalties arising, and

Keep available for inspection any relevant tax certificates.

Relief or exemption, as appropriate, will be granted to the beneficiary on a claim made within five years and ten months of the end of the year of assessment in which the beneficiary received the payment from the trustees.

No credit will be given for UK tax treated as paid on income received by the trustees which would not be available for set off under Section 687(2) ICTA 1988 if that section applied, and that tax is not repayable (for example on dividends). However, such tax is not taken into account in calculating the gross income treated as taxable on the beneficiary under this concession.

B19. Capital allowances for buildings: balancing charge after cessation of trade - Superseded by Section 201 and Schedule 39, FA 1996.

B20. Capital allowances for buildings: sales by property developers of buildings which have been let

Where an industrial building is constructed by a person who is carrying on a trade consisting of the construction of buildings with a view to their sale, and it is sold by that person after having been occupied by a tenant, the purchaser is not entitled to writing down allowances since no capital expenditure has been incurred on the construction of the building, the developer's expenditure having been on revenue account (Section 2(1)(c), CAA 1968). In practice writing down allowances are made to the purchaser on the amount of the purchase price (or, if less, the amount of the construction expenditure) on the same basis as if he had purchased the building from an owner who had incurred capital expenditure on its construction.

The same treatment applies to qualifying hotels and commercial buildings in enterprise zones, to which the industrial buildings allowance rules apply in this respect.

B21. The construction industry tax deduction scheme: failure to make deductions from uncertificated sub-contractors - Obsolete

B22. Close companies: non-resident participators: apportionment Obsolete as related to close company apportionment rules abolished by FA 1989.

B23. The construction industry tax deduction scheme: exclusion of certain small payments

B24. Postponement of capital allowances to secure double taxation relief – Obsolete

B25. Schedule D Case V losses – Obsolete. Made so for individuals for years 1998/99 et seq by Section 41, FA 1995 and for companies from 1 April 1998 by Clause 38 and paragraph 28, Part II, Schedule 5 FA 1998

B26. Capital allowances: assets leased outside the United Kingdom: transitional provisions: syndicated leases – Obsolete

B27. Approved employee share schemes: jointly owned companies – Obsolete – Enacted in the Paragraph 46 of Schedule 3 and Paragraph 34 of Schedule 4 ITEPA 2003

B28. Leased cars costing over £12,000: rebate of hire charges - Superseded by Section 201 and Schedule 39, FA 1996

B29. Treatment of income from caravan sites where there is both trading and associated letting income – legislated in section 43 CTA 2009 and section 20 ITTOIA

B30. Income from property in Scotland: Property managed as one estate – Obsolete

B31. Capital allowances: plant or machinery which is a fixture in a business building situated within an enterprise zone.

The rate of capital allowances on expenditure on machinery or plant, whether the assets are chattels or fixtures (including parts of a building) is normally 25 per cent of the reducing balance. This is a higher rate than that due on expenditure on the construction of an industrial building (4 per cent straight line) whilst in general no allowances at all are due on the construction of a commercial building. Exceptionally a 100 per cent initial allowance is due on expenditure on the construction of an industrial building or a commercial building in an enterprise zone.

Such expenditure does not, however, include expenditure on the provision of machinery or plant which becomes an integral part of such a building; expenditure on such machinery or plant only qualifies for a 25 per cent writing down allowance. By concession, where a taxpayer is entitled to a 100 per cent initial allowance in respect of expenditure on the construction of an industrial or commercial building in an enterprise zone, he may elect to treat as part of the said expenditure on the provision of machinery or plant which is to be an integral part of such a building.

B32. Payroll giving - Administrative costs – Obsolete

B33. Profits Related Pay: Similar Terms Requirement – Obsolete

B34. Unit Trusts: Relief from liability under Section 350, ICTA 1988 – Obsolete

B35. Borrowing and lending of securities: gilt lending to redemption - Obsolete (See SI 1995 No 3219)

B36. Borrowing and lending of securities: replacement loans - Obsolete (See SI 1995 No 3219)

B37. The herd basis - shares in animals – Obsolete

B38. Tax concessions on overseas debts

See C34

B39. Contributions to overseas pension schemes – Obsolete

B40. UK investment managers acting for non-resident clients - Obsolete

B41. Claims to repayment of tax

Under the Taxes Management Act, unless a longer or shorter period is prescribed, no statutory claim for relief is allowed unless it is made within 4 years from the end of the tax year to which it relates.

However, repayments of tax will be made in respect of claims made outside the statutory time limit where an over-payment of tax has arisen because of an error by the Inland Revenue or another Government Department, and where there is no dispute or doubt as to the facts.

B42. ‘Free gifts’ and insurance contracts

SEE ESC C37

The concession now only applies where the chargeable person is a company since the equivalent circumstances for individuals are now legislated for in section 497 of ITTOIA 05

B43. Alterations to old pension schemes

Where an alteration is made to the terms on which benefits are payable by a fund to which Section 608, ICTA 1988 applies, exemption from tax shall continue to be allowed in respect of the income, commissions, profits and gains applied for the purposes of the fund if-

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(i) the alteration provides for pensions in payment to be increased by an amount not exceeding the rise in the Retail Prices Index or at a fixed rate of up to 3% a year compound (whether or not the increase in the Retail Prices Index reaches that level);

(ii)

subject to the conditions below, the alteration allows for pensions to be commuted in full to a lump sum where the total benefit payable under all schemes in respect of the employment does not exceed the value of a pension of £260 a year.

(iii)

The alteration is in order to give effect to any pension sharing order or provision as is mentioned in Section 28(1) Welfare Reform and Pensions Act 1999 (rights under pension sharing arrangement) whereby pensions rights are shared on divorce or annulment.

The conditions applying to limb (ii) of this concession are that either:

- (a) the administrator of the fund should make no reduction in the amount of commutation payment made to the employee on account of any income tax borne by the administrator when making the payment; or
- (b) the employee, having been made aware of the tax consequences, has agreed to the commutation payment.

B44. Profit-Related Pay: Extraordinary items - Replaced by Para 19(6)(1) Schedule 8 ICTA 1988.

B45. Automatic penalties for late company and employers' and contractors' end-of-year returns - Obsolete. Superseded by ESC B46

B46. Automatic penalties for late company and employers' and contractors' end-of-year returns - Obsolete.

B47. Furnished lettings of dwelling houses - Wear and tear of furniture. Obsolete. The wear and tear allowance was legislated by The Enactment of Extra-Statutory Concessions Order 2011 with effect from 1 April 2011. The remainder of the concession was withdrawn with effect from 1 April 2013.

B48. A deduction for an employer's National Insurance class 1A contributions when computing profits for tax purposes - Obsolete. Section 65 FA 1997 applies to contributions after 23 November 1996

B49. Section 532 Capital Allowances Act 2001: Grants repaid. Obsolete. Withdrawn 1 April 2013 for corporation tax and 6 April 2013 for income tax.

B50. Capital allowances for caravans on holiday caravan sites – Obsolete

B51. Subcontractors in the construction industry: the turnover test - definition of 'turnover'- Obsolete

B52. Subcontractors in the construction industry: the multiple turnover tests – Obsolete

B53. Non residents and gains on life insurance policies -

This ESC is recatergorised as C33

B54. Tax relief on films, tapes and discs

Notwithstanding Section 113(2) of Finance Act 2000, master audiotapes or discs shall be deemed to be included in the definitions in Section 68(2) of the Capital Allowances Act 1990. This ensures that treatment of the expenditure on production of master audiotapes or discs will continue to be treated as expenditure of a revenue nature.

B55. Farming Losses - Section 397 Income and Corporation Taxes Act (ICTA) 1988 - Obsolete

B56. Herd Basis Rules: Slaughter of immature animals intended to be replacements – Obsolete This concession was specific to 2001 foot and mouth outbreak and is now obsolete.

C. CONCESSIONS APPLICABLE TO COMPANIES ETC (CORPORATION TAX AND INCOME TAX)

C1. Credit for underlying tax: dividends from trade investments in overseas companies

(a) Portfolio shareholders

Credit is still available under a few double taxation agreements for underlying tax on portfolio investments. Where a United Kingdom resident receives dividends on a holding of ordinary shares (including the participating part of participating preference dividends) in a company resident in an overseas territory with which the United Kingdom has an agreement which provides for such relief, the credit legally due against the United Kingdom tax chargeable on the dividends takes into account, in addition to any direct tax on the dividends, the underlying tax payable in the other country on the company's profits. In practice, provided that the overseas countries concerned have agreements with the United Kingdom of the type mentioned above, the credit also takes into account any United Kingdom tax or foreign tax in a third country payable by the overseas company on its income; and, when the overseas company's profits include ordinary or participating preference dividends from a second company resident in that or another overseas country, both the direct tax charged on the dividends and the underlying tax payable on the profits of the second company. Relief is given similarly for the tax relating to dividends and profits of companies at further removes along a chain of shareholdings.

(b) Insurance companies

Where a United Kingdom company is charged to tax under Case I of Schedule D in respect of any insurance business which it carries on, then, in computing the credit available to the company in respect of dividends paid to it by a company resident in an overseas territory, any tax payable by the overseas company in respect of its profits (whether in that territory, in the United Kingdom or in a third country) is, subject to certain limitations, taken into account -

i. where such business or any part of it is carried on through a branch or agency in the territory in which the overseas company is resident and the dividend is referable to the insurance business carried on by the United Kingdom company which is charged to tax under Case I of Schedule D,

and/or

ii. where the United Kingdom company controls not less than one-tenth of the voting power of the overseas company (or not less than one-quarter as respects dividends paid to it before 1 April 1971 by companies resident in certain overseas territories).

Where a United Kingdom company is entitled to relief under (i), the credit also takes into account, in practice, any United Kingdom or overseas tax paid on its income in the same or another country by any company paying dividends to and resident in the same country as the overseas company; and, similarly, tax relating to dividends and

income of companies resident in the same country at further removes along a chain of shareholdings.

Where a United Kingdom company controls, directly or indirectly, not less than one-tenth of the voting power of a company resident in an overseas country which carries on insurance business which would have been charged to tax under Case I of Schedule D if that company (referred to as 'the operating company') had been resident in the United Kingdom (or not less than one-quarter of the voting power where that proportion would have been required for the purpose of relief under (ii) above), the credit also takes into account, in practice, any United Kingdom or overseas tax paid on its income in the same or another country by any company paying dividends to and resident in the same country as the operating company, provided, however, that the tax so available for relief shall be reduced in the proportion which the amount of the operating company's distributable surplus for the year of claim from such insurance business bears to the amount of its total distributable surplus for that year; and, similarly, tax relating to dividends, and income of companies resident in the same country as the operating company at further removes along a chain of shareholdings.

C2. Loan and money societies – Obsolete

C3. Holiday clubs and thrift funds - Obsolete

C4. Trading activities for charitable purposes – Obsolete SI 2011/1037 The Enactment of Extra-Statutory Concessions Order 2011

C5. Industrial and provident societies

Sub-section 393(8), ICTA 1988 enables a company with a trading loss brought forward under Section 393(1) to set off the loss not only against the trading income of the accounting period but also against any interest or dividends on investments which would have been taken into account as trading income but for the fact that they are charged to tax under other provisions.

In the case of a registered industrial and provident society carrying on a trade, the following items of income may be regarded as trading income for the purposes of Section 393(8): -

- a. interest brought into the computation of corporation tax profits as income under Case III of Schedule D;

- b. annual interest received under deduction of tax;
- c. amounts assessable under Case V of Schedule D.

C6. Close companies: excess of relevant income over distributions: small amounts – Obsolete

C7. Close companies: interest on inter-bank loans – Obsolete

C8. Close companies: loan creditors – Obsolete – withdrawn with effect from 1 April 2010

C9. Associated companies

1. Section 13, ICTA 1988 (small companies' relief) and Section 13AA, ICTA 1988 (corporation tax starting rate) contains rules which apply when one company is associated with one or more other companies. Broadly speaking, one company is associated with another if one of the two has control of the other, or both are under the control of the same person or persons. The rules about control are contained in Sections 416 and 417, ICTA 1988. The provisions of this concession relate to the application of those rules only for the purpose of Sections 13 and 13AA.

2. The Revenue will not, by concession, treat one company as being under the control of another where the first company is only under the control of the second by taking into account fixed rate preference shares (as defined in paragraph 13(6), Schedule 28B, ICTA 1988) which a company possesses. Nor will the Revenue treat one company as associated with another where those companies are only under common control by taking into account fixed rate preference shares which another company possesses. In all cases, this part of the concession applies only when the company possessing the fixed rate preference shares:

- is not a close company, and
- takes no part in the management or conduct of the company which issued the shares, or of the business of that company, and
- subscribed for the shares in the ordinary course of a business carried on by it which includes the provision of finance.

3. The Revenue will not, by concession, treat one company as being under the control of a loan creditor of that company where there is no past or present connection between the company and the loan creditor other than the loan or loans which cause it to be a loan creditor. Nor will the Revenue treat one company as associated with another where the first company is only associated with the second by being controlled by the same loan creditor provided there is no past or present connection between the companies other than the common loan creditor. In all cases, this part of the concession applies only when the loan creditor:

- is a company which is not a close company, or

- is a bona fide commercial loan creditor.

4. The Revenue will not, by concession, treat one company as being associated with a trustee company (for example, a trustee company of a clearing bank) where the company is only associated with that trustee company because it is under its control by taking into account rights and/or powers the trustee company holds in trust provided there is no past or present connection between the company and the trustee company other than those rights and/or powers. In these circumstances, the Revenue will not, by concession, treat the trustee company as being associated with the other company. Nor will the Revenue treat one company as being associated with another because they are controlled by the same trustee by virtue of rights and/or powers held in trust by that trustee provided there is no past or present connection between the companies other than those rights and/or powers.

5. The Revenue will, by concession, treat the definition of a relative (in Section 417(4), ICTA 1988) for the purpose of Sections 13 and 13AA as including only a husband or wife or child who is a minor. This part of the concession applies only in respect of companies where there is no substantial commercial interdependence between them.

C10. Groups of companies: arrangements Obsolete (SI 2012/266 – The Enactment Extra-Statutory Concessions Order 2012

C11. Demergers: Section 213(7) & (9), ICTA 1988

To satisfy the conditions for relief in a demerger under Section 213, ICTA 1988, the distributing company must after the distribution be either a trading company or the holding company of a trading group.

Section 213(7), ICTA 1988 relaxes that condition if: -

- a. the transfer relates to two or more 75 per cent subsidiaries of the distributing company; and
- b. the distributing company is dissolved without there having been after the distribution any net assets of the company available for distribution in a winding-up or otherwise.

However, a company will not be regarded as failing to comply with the requirements of Section 213(7), ICTA 1988 merely because it retains after the distribution sufficient funds to meet the cost of liquidation and to repay a negligible amount of share capital remaining. Share capital will be regarded as negligible if it amounts to £5,000 or less. This concession applies equally to Section 213(7) and (9).

C12. Retail co-operative societies: accounting periods

Many retail co-operative societies prepare their accounts at half-yearly or quarterly intervals. For corporation tax purposes each period of account would constitute an 'accounting period' so that corporation tax payments would fall to be made more often than once a year. In practice, accounts comprising 12 months to an agreed terminal date are to be regarded as one accounting period. This concession does not apply on the occasion of a change of accounting date, a commencement or a cessation (including amalgamations and transfers of engagements) and is subject to an undertaking that, apart from the changes referred to, the society will adhere consistently to the concessional basis.

C13. Agricultural co-operative associations ‘second and third-tier’ associations – Obsolete – withdrawn with effect from 1 April 2010

C14. Tax credit relief for foreign banks trading in the United Kingdom through branches - Obsolete

C15. Dissolution of unincorporated associations: distributions to members

Where a company which is an unincorporated association is dissolved the distribution of its assets to its members is an income distribution within Section 209, ICTA 1988, limited where Section 490(1) or (4) of that act applies to the amount distributed out of profits brought into charge to corporation tax or out of franked investment income. If substantially the whole of the association's activities have been of a social or recreational nature, it has not carried on an investment business or a trade other than a mutual trade, and the amount distributed to each member is not large, it is given the option of not having Section 209 applied and of having the whole of the amounts distributed treated as capital receipts of the members for the purpose of calculating any chargeable gains arising to them on the disposal of their individual interests in the association.

C16. Dissolution of companies under Sections 652 and 652A Companies Act 1985: distributions to shareholders Obsolete (SI 2012/266 – The Enactment Extra-Statutory Concessions Order 2012

C17. Interest and currency swaps – Obsolete

C18. Section 209, ICTA 1988 - made obsolete by the insertion of Section 209(2)(da) and the repeal of Section 209(2)(e)(iv) by Section 87 FA 1995

C19. Stock lending by pension funds - Obsolete (See SI 1995 No 3036)

C20. Claims to group relief – Obsolete

C21. Life insurance companies: levies under the LAUTRO (Compensation Schemes) Rules - Obsolete

C22. Building societies – Obsolete

C23. Interest payable by banks and similar businesses- Obsolete

C24. General insurance business: Claims and elections – Obsolete

C25. Long term insurance business: Claims and elections – Obsolete

C26 Interest payable in the UK - Obsolete

C27 Life assurance business: Calculation of investment return and profits - Obsolete - withdrawn with effect from 9 December 2010

C28 Connection within Section 87 Finance Act 1996 – Obsolete

C29 Transfers of long term insurance business: transitional relief for losses incurred in general annuity business – Obsolete

C30. Authorised unit trusts and open-ended investment companies: waivers of distributions

The tax framework for distributions

1. Under Sections 468H and 468I, ICTA 1988, an authorised unit trust (AUT) is required, for each 'distribution period' (as defined in Section 468H(3)(a)), to show in its 'distribution accounts' (defined in Section 468H(3)(b)) the total amount of income available for distribution to its unit holders. Section 468H(2) provides that, for tax purposes, the making of a distribution to a unit holder includes investing an amount on the unit holder's behalf in respect of his accumulation units.
2. For tax purposes, the total amount shown in the 'distribution accounts' as available for distribution to unit holders is, in all cases, treated as though it is actually distributed on the relevant 'distribution date' (as defined in Section 468H(4)). The trustees are obliged under Section 234A to issue appropriate tax vouchers to the unit holders in respect of the distribution.

3. The Open-ended Investment Companies (Tax) Regulations 1997 (SI 1997 No. 1154) provide that the tax rules for open-ended investment companies (OEICs) which are incorporated in the United Kingdom have essentially the same effects as the corresponding rules for AUTs. In particular, that means that the total amount shown in the 'distribution accounts' of an OEIC as available for distribution to the owners of its shares is treated for tax purposes as though it is distributed to them on the relevant distribution date, and the company has to issue tax vouchers accordingly.

Financial Services Regulations

4. AUTs and OEICs have to comply with the relevant Financial Services Regulations which have been made by the Securities and Investments Board (SIB). One of the requirements of those Regulations is that, except in the circumstances described in the following paragraph, an AUT or OEIC must, in respect of each of its accounting periods, distribute or, respectively, accumulate the total amount of income which is available for allocation between the holders of its income or accumulation units or shares.

5. An AUT or OEIC does not have to comply with this requirement if having to do so would mean that the average amount of income allocated to the investors would fall below the *de minimis* level specified in the relevant Regulations. In effect, this means that the SIB Regulations permit an AUT or OEIC to waive a distribution (or accumulation) in such circumstances if it so chooses, although the fund does, in fact, have some income available for distribution.

The strict position in tax law

6. The tax rules relating to the distributions of AUTs and OEICs apply wherever, in respect of a distribution period, a fund has an amount of income available for distribution. In strictness, that means that where, under the terms of the relevant *de minimis* provision in the Financial Services Regulations, an AUT or OEIC chooses to waive a distribution (or accumulation) for a particular accounting period, it is, nevertheless, treated for tax purposes as making distributions of the total amounts shown in the 'distribution accounts' as available for distribution to its investors for distribution periods ending in the accounting period in question. The trustees or OEIC are accordingly obliged to issue tax vouchers to the unit holders or shareholders in respect of those deemed distributions.

The concessional treatment

7. Under the terms of this concession, provided that the conditions specified in paragraph 8 are satisfied or, as the case may be, the condition specified in paragraph 9 is satisfied, the AUT or OEIC concerned will not be treated for tax purposes as making distributions of the total amounts shown in its 'distribution accounts' as available for distribution to its investors in respect of a distribution period for which it waives a distribution (or accumulation) in accordance with the *de minimis* provision in the relevant Financial Services Regulations. In such circumstances, the requirement to issue tax vouchers in respect of the waived distribution will be relaxed. The differences between the conditions in paragraphs 8 and 9 reflect the differences between the *de minimis* provisions applying to AUTs and OEICs.

8. The conditions applicable to an AUT are—
no more than 50 per cent by value of its units in issue on the distribution date are held in bearer form; and

the income property of the AUT for the accounting period concerned does not become part of the capital property of the AUT at the end of that period, but is carried forward to the next accounting period and assimilated in the income property of the AUT for that accounting period.

9. The condition applicable to an OEIC is that no more than 50 per cent by value of its shares in issue on the distribution date are held in bearer form.

10. The relaxations provided under this concession extend no further than modifying the tax treatment of distributions of an AUT or OEIC in the circumstances in which it applies. In particular, the concession does not have the effect of treating income arising to an AUT or OEIC during an accounting period for which a distribution (or accumulation) is waived as though, for tax purposes, it arises later. The fund's liability to corporation tax in respect of that accounting period will be calculated according to the usual rules by reference to its taxable profits for that period.

Umbrella schemes and companies

11. For the purposes of the Tax Acts, each sub-fund of an AUT which is an umbrella scheme is regarded as an AUT in its own right, and the umbrella scheme itself is not regarded as an AUT. Similarly, each sub-fund of an OEIC which is an umbrella company is regarded as an OEIC in its own right, and the Umbrella Company itself is not regarded as an OEIC.

12. Where a sub-fund of an umbrella scheme is treated as an AUT for tax purposes, references in this concession to the units in issue of that AUT are to be regarded as references to the rights or interests (however described) of those persons who for the time being have rights in the sub-fund in question. Similarly, where a sub-fund of an umbrella company is treated as an OEIC for tax purposes, references in this concession to the shares in issue of that OEIC are to be regarded as references to the shares in issue of the umbrella company which for the time being confer rights in the sub-fund in question.

C31. Scientific Research Associations

Scientific Research Associations which qualified for tax exemption under s.508 Income and Corporation Taxes Act 1988 for accounting periods ending on or before 31 December 1996, and which would have

(i) continued to do so under the practice of the Department of Trade and Industry up to that time; and

(ii) met the requirements of s. 508 (1) (b),

will be treated as eligible for the tax exemptions provided by s.508 and Section 271(6) Taxation of Chargeable Gains Act 1992, for accounting periods beginning before 1 September 1999.

This treatment will also be extended to bodies which were established before 4 September 1998 which would have obtained approval as Scientific Research Associations under the practice of the Department of Trade and Industry up to 31 December 1996.

Payments to bodies treated as eligible for the exemption under s. 508 as a result of this concession, will qualify for relief under Section 136 Capital Allowances Act 1990, provided the other conditions for relief under that section are satisfied.

Capital gains made on disposals of assets on or after 4 September 1998 will qualify for exemption under this concession provided the proceeds are applied for the purposes of qualifying scientific research by a body approved by the Department of Trade and Industry as a Scientific Research Association for accounting periods beginning on or after 1 September 1999.

C32. Interest relief: companies with tax and National Insurance (NICs) liabilities under the personal service rules where the payments for relevant contracts have been received after deduction of tax by virtue of the Construction Industry Scheme (CIS) provisions. – Obsolete

C33. Non residents and gains on life insurance policies

Non-United Kingdom (UK) residents and chargeable event gains on life insurance policies, life annuity contracts and capital redemption policies and the information duties of UK insurers.

PART 1

Non-UK resident companies and chargeable event gains on life insurance policies, life annuity contracts and capital redemption policies

1. A 'gain' may be treated as arising in connection with a policy of life insurance, a life annuity contract or a capital redemption policy when a 'chargeable event' occurs or is treated as occurring. Chapter 2 of Part 13 of the Income and Corporation Taxes Act 1988 (ICTA) defines 'chargeable events' and sets out how a 'gain' is calculated where the chargeable person is a company. It also contains the other provisions relating to chargeable events referred to below. A gain may also be treated as arising on a company in connection with a personal portfolio bond under Regulation 5 of The Personal Portfolio Bond (Tax) Regulations SI 1999 No. 1029.

2. This concession is about the circumstances in which a gain may be treated as part of the total income of a company.

These are when

a company is the beneficial owner of the rights conferred by a policy or contract, the rights are held on trusts created by an individual or a company, or the rights are held as security for a debt owed by a company.

3. The provisions that deem a gain to be part of the income of an individual or a company are not restricted to UK residents. Except as set out in paragraph 4, however, HM Revenue and Customs will not pursue liability to tax on a gain that is treated as income of a company that is not resident in the UK at any time during the period, for which the gain would otherwise be charged

4. A tax liability may arise if a policy or contract is held as property used by, or held by, a UK branch or agency of a company that is not resident in the UK.

5. Nothing in this concession affects:

a gain that is treated as constituting income payable to non-resident trustees or to a company or other institution resident or domiciled outside the UK, and the tax treatment of a benefit that an individual ordinarily resident in the UK receives from the trustees, the company or other institution.

PART 2

The information duties of UK insurers

6. Insurers are required to provide information both to policyholders and to HM Revenue and Customs (HMRC) when a 'chargeable event' occurs or is treated as occurring. The information duties of insurers are at Section 552 and Section 552ZA, ICTA. The only circumstance in which the insurer does not need to provide information either to the policyholder or to HMRC is when the insurer is satisfied that no gain arises by reason of the event. The obligation to provide information is not restricted to providing information about gains made by policyholders resident in the UK. Information that an insurer supplies to HMRC about a gain made by a policyholder resident outside the UK may be exchanged with the fiscal authorities in the country in which the policyholder resides.

7. Unless the circumstances set out in paragraph 8 below apply, a UK insurer must provide information about gains both to policy holders and to HMRC in accordance with Section 552, ICTA, including gains in connection with policies or contracts attributable to any of its branches outside the UK. Information must be given about all gains made in connection with policies and contracts carried out or administered at the branch and not just those effected at the branch. This includes business transferred to a branch. The insurer may arrange for the branch to provide the information directly to its policyholders and to HMRC.

8. The circumstances in which an insurer does not have to provide information to HMRC under Section 552, ICTA are where:

the policy holder does not reside in the UK at any time during the year of assessment or accounting period, as appropriate, in which the gain would be treated as forming part of the income of the policy holder, on the assumption that

the insurer has provided information about the gain or the sum payable or other benefits conferred by reason of the event to the fiscal authority of the country in which the policy holder resides or, in the case of branch business, to the fiscal authority of the country in which the branch is situated; or

the policy or contract forms part of the business of the company carried out or administered at a branch of the company outside the UK and the business of the branch is not mainly with persons residing in the UK and British citizens. A branch's business is for these purposes mainly with persons residing in the UK and British citizens if more than 50% of the total of the liabilities of the insurer attributable to the branch relate to policies and contracts with such holders.

In this paragraph:

the liabilities to be taken into account for this purpose are the 'closing liabilities' within the meaning of Section 431(2), ICTA as at the end of the latest preceding accounting period for which the insurer has prepared its regulatory return,

'policy holder' includes the holder of a contract for a life annuity contract and 'branch' includes an agency.

9. The tests whether information should be supplied should be applied to the best of an insurer's knowledge and belief taking account of all information in the insurer's possession, whenever that information was obtained and wherever and in what form it is stored.

10. HMRC may audit an insurer's books, documents and records to ascertain whether there has been, or is likely to be, any contravention of the information requirements. If an insurer is not supplying information because paragraph 8 above applies, the audit may include an audit of any information in the insurer's possession relevant in demonstrating that the conditions set out in those paragraphs are satisfied. If they are satisfied, HMRC will not treat the insurer as having contravened the requirements of Section 552, ICTA.

Commencement

11. This version of ESC B53 removes material that is redundant because it has been legislated in Income Tax (Trading and Other Income) ACT 2005(ITTOIA), which took effect 6 April 2005. It replaces the version published on 18 March 2002, which itself replaced the version published on 22 November 1999.

12. Parts I and II of the concession apply in relation to gains treated as arising when chargeable events occur or are treated as occurring on or after 6 April 2002. The equivalent parts of the version of ESC B53 published on 22 November 1999 continue to apply in relation to gains treated as arising when chargeable events occur or are treated as occurring before 6 April 2002.

C34. Tax concessions on overseas debts - Obsolete (SI 2009/730)

C35. Variable purchased life annuities: carry forward of excess of capital element

If, in the case of a purchased life annuity to which Section 656, ICTA 1988 applies, the amount of an annuity payment depends on a contingency other than the duration of a human life or lives, and the capital element determined in accordance with the provisions of that section exceeds the amount of that payment, then the excess may be carried forward for allowance as an addition to the capital element in the next following payment or payments.

This Concession was legislated as section 719(5) of ITTOIA 05 for individuals and now only applies where the annuity is held by a company.

C36. Treatment of income from caravan sites where there is both trading and associated letting income

Where the proprietor of a caravan site carries on material activities associated with the operation of that site which constitute trading, there may be included as receipts of that trade any site income from the lettings of pitches for static or touring caravans, and any income from letting caravans where the letting does not of itself amount to a trade.

C37. 'Free gifts' and insurance contracts

Insurance companies frequently offer incentives in connection with policies of life insurance contracts for life annuities, and capital redemption policies. These are often described as 'free gifts' and may take a variety of forms, such as small consumer goods, store vouchers, or discounts offered by hotels or travel agents.

So long as the aggregate cost to the insurer of all 'gifts' provided in connection with an insurance (and for this purpose a cluster of policies will be treated as one insurance) does not exceed £30, no account will be taken of the 'gifts' in:

- assessing whether policies are 'qualifying' life insurance policies under Schedule 15 ICTA 1988; or
- computing any gain arising under the chargeable event legislation, Chapter II, Part XIII, ICTA 1988.

The concession may apply to current as well as future insurances and also to any tax liabilities in respect of past insurances which are not final at the date of issue of this concession. The concession now only applies where the chargeable person is a company since the equivalent circumstances for individuals are now legislated for in section 497 of ITTOIA 05

D. CONCESSIONS RELATING TO CAPITAL GAINS (INDIVIDUALS AND COMPANIES)

D1. Insurance recoveries: short leases – Obsolete

*D2. Residence in the United Kingdom: year of commencement or cessation of residence: capital gains tax **Obsolete. Replaced by Schedule 45 FA 2013 from 6 April 2013***

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D3. Private residence exemption: periods of absence (a)- superseded by SI 2009/730

D4. Private residence exemption: periods of absence (b) – superseded by SI 2009/730

D5. Private residence exemption: property held by personal representatives – superseded by Finance Act 2004

D6. Private residence exemption: separated couples- superseded by SI 2009/730

D7. Retirement relief: business passing to spouse – Obsolete

D8. Retirement relief: change in business during 10 years before disposal - Obsolete

D9. Retirement relief: directors of groups of companies – Obsolete

D10. Unquoted shares acquired before 6 April 1965: disposal following Reorganisation of share capital

Where, in consequence of a reorganisation of share capital before 6 April 1965, computation of a gain by reference to value at that date is required by paragraph 19(1) Schedule 2, TCGA 1992 or where, under paragraph 19(2) in consequence of such a reorganisation after 6 April 1965 time apportionment applies only to the gain or loss up to the date of reorganisation, capital gains tax is not charged on a disposal of the entire new shareholding on more than the actual gain realised.

For the purposes of this concession, the disposal of the entire new holding by way of a number of separate transactions all within the same income tax year (or, in the case of a company, the same accounting period) will be treated as a single disposal.

D11. Retirement relief: asset owned by a director and used by the company - Obsolete

D12. Close companies: apportionments of income and the consequential for capital gains tax: close companies in liquidation - Obsolete

D13. Retirement relief: sale of assets in anticipation of liquidation – Obsolete

D14. Retirement relief: sale of assets following cessation of trading – Obsolete

D15. Relief for the replacement of business assets: unincorporated associations- obsolete (SI 2009/730)

D16. Relief for the replacement of business assets: repurchase of the same asset

For the purposes of Section 152, TCGA 1992, where a person sells a business, or a business asset, and for purely commercial reasons subsequently repurchases the same asset, that asset will be regarded as a ‘new asset’.

***D17. Unit trusts for exempt unit holders: Section 100(2), TCGA 1992 – Obsolete-
Replaced by section 20 F (2) A 2005.***

D18. Default on mortgage granted by vendor

Where on the sale of an asset at arm's length there has been a default in respect of a loan granted by the vendor to the purchaser of all or part of the proceeds, and as a result the vendor has regained the beneficial ownership of the interest which he has contracted to sell, the vendor may elect that for Capital Gains Tax purposes the gain realised by him on that sale be taken as limited to the amount of the proceeds (net of allowable incidental costs of disposal) retained by him and the loan be treated as never having come into existence. Accordingly the computation of the gain (or loss) on any later sale of that asset will be made by reference to the original date and cost of acquisition. The treatment for income tax purposes of any interest received in respect of the loan will remain unaltered.

D19. Replacement of buildings destroyed - Obsolete

D20. Private residence exemption: residence occupied by dependent relative

Where relief is claimed under Section 226, TCGA 1992 (Section 105, CGTA 1979) in respect of the disposal by an individual of a dwelling house which has at any time been the sole residence of a dependent relative, the condition that the dwelling house must have been provided rent free and without any other consideration will be regarded as satisfied where the dependent relative pays all or part of the occupier's council tax and the cost of repairs to the dwelling house attributable to normal wear and tear. Additionally, the benefit of the relief will not be lost where the dependent relative makes other payments in respect of the property either to the individual or to a third party, provided that no net income is receivable by the individual, taking one year with another. For this purpose net income will be computed in accordance with the normal rules of Schedule A, except that any mortgage payments (including both income and capital elements) and any other payments made by the dependent relative as consideration for the provision of the property, whether made directly to the mortgagee or other recipient or indirectly via the individual will be credited as receipts. The deductions to be debited will be computed in accordance with the normal rules of Schedule A.

D21. Private residence exemption: late claims in dual residence cases

Where for any period an individual has, or is treated by the Taxes Acts as having more than one residence, but his interest in each of them, or in each of them except one, is such as to have no more than a negligible capital value on the open market (e.g. a weekly rented flat, or accommodation provided by an employer) the two year time limit laid down by Section 222(5)(a), TCGA 1992 for nominating one of those residences as the individual's main residence for capital gains tax purposes will be extended where the individual was unaware that such a nomination could be made. In such cases the nomination may be made within a reasonable time of the individual first becoming aware of the possibility of making a nomination, and it will be

regarded as effective from the date on which the individual first had more than one residence.

D22. Relief for the replacement of business assets: expenditure on improvements to existing assets

Where a person carrying on a trade uses the proceeds from the disposal of an 'old asset' on capital expenditure to enhance the value of other assets, such expenditure is treated for the purposes of Sections 152 to 158 and Schedule 4, TCGA 1992 as incurred in acquiring other assets provided:

- (a) the other assets are used only for the purposes of the trade, or
- (b) on completion of the work on which the expenditure was incurred the assets are immediately taken into use and used only for the purposes of the trade.

D23. Relief for the replacement of business assets: partition of land on the dissolution of a partnership

Where land used for the purposes of a trade carried on in partnership is partitioned by the partners, the land acquired is treated for the purposes of Sections 152-158, TCGA 1992 as a 'new asset' provided that the partnership is dissolved immediately thereafter. This concession also applies to other qualifying assets which are acquired on the partition.

D24. Relief for the replacement of business assets: assets not brought immediately into trading use.

Where a 'new asset' is not, on acquisition, immediately taken into use for the purposes of a trade, it will nevertheless qualify for relief under Sections 152-158, TCGA 1992 provided: -

- (a) the owner proposes to incur capital expenditure for the purposes of enhancing its value;
- (b) any work arising from such capital expenditure begins as soon as possible after acquisition, and is completed within a reasonable time;
- (c) on completion of the work the asset is taken into use for the purpose of the trade and for no other purpose; and
- (d) the asset is not let or used for any non-trading purpose in the period between acquisition and the time it is taken into use for the purpose of the trade.

Where a person acquires land with a building on it, or with the intention to construct a building on it, the land is treated as qualifying for this concession provided that the building itself qualifies for the relief, whether by this concession or otherwise, and provided the land is not let or used for any non-trading purpose in the period between

its acquisition and the time that both it and the building are taken into use for the purposes of the trade.

D25. Relief for the replacement of business assets: acquisition of an interest in an asset already used for the purposes of a trade.

Where a person carrying on a trade uses the proceeds from the disposal of an 'old asset' to acquire a further interest in another asset which is already in use for the purposes of the trade, the further interest is treated for the purposes of Sections 152-158, TCGA 1992 as a 'new asset' which is taken into use for the purposes of the trade.

D26. Relief for exchanges of joint interests – Obsolete (SI 2010/157 - The Enactment of Extra-Statutory Concessions Order 2010)

D27. Earn-outs - Obsolete. Made Obsolete with introduction of Section 138A TCGA 1992 by Section 89(6)(b)(ii) FA 1996

D28. Assets of negligible value – Obsolete

D29. Transfers of Long-term Business under Section 49 of the Insurance Companies Act - Obsolete

D30. Relief for the replacement of business assets - Rendered obsolete by Section 48, FA 1995

D31. Retirement Relief: Date of Disposal. – Obsolete

D32. Transfer of a business to a company

Where liabilities are taken over by a company on the transfer of a business to the company, the Inland Revenue are prepared for the purposes of the 'rollover' provision in Section 162, TCGA 1992, not to treat such liabilities as consideration. If therefore the other conditions of Section 162 are satisfied, no capital gain arises on the transfer. Relief under Section 162 is not precluded by the fact that some or all of the liabilities of the business are not taken over by the company.

D33. Capital Gains Tax on Compensation and Damages

Zim Properties Ltd - Compensation and Damages

1. Introduction

A person who receives a capital sum derived from an asset is treated for the purposes of capital gains tax as disposing of that asset. The case of *Zim Properties Ltd v Proctor* 58 TC 371 has established that the right to take court action for compensation or damages is an asset for capital gains tax purposes. It follows that a person who receives compensation or damages, whether by court order or arbitration or by negotiated settlement as a result of a cause of action may be regarded as disposing of the right of action. A capital gain may accrue as a result.

The strict position

2. Cost of acquisition

A capital gain will accrue if the capital sum received as compensation exceeds the amount which may be deducted as the cost of acquiring the right of action. A right of action will almost invariably be acquired otherwise than by way of bargain made at arm's length. Special rules for determining the cost of acquisition apply in these circumstances. Where the right of action was acquired on or before 9 March 1981, it is deemed to have been acquired for a sum equal to its market value on the date of acquisition. Where it was acquired on or after 10 March 1981 and there was no disposal of the right of action corresponding to the claimant's acquisition of it, then where - as is usually the case - the taxpayer gave no consideration to acquire it is treated as having been acquired without cost.

If the cause of action was held on 31 March 1982 and disposed of on or after 6 April 1988, it will, in accordance with the rebasing rules, be deemed to have been disposed of and immediately reacquired at its open market value on 31 March 1982.

If a right of action passes on the death of the claimant, it is treated as acquired at its open market value on the date of death.

In computing the gain or loss, a deduction may be made for any legal and professional fees incurred in pursuing the claim. If the action in respect of a claim of substance fails, or if the expenses exceed the compensation, a capital loss may accrue.

3. Date of acquisition

A right of action accrues and so is acquired by a person for capital gains tax purposes when, for example as a result of a breach of contract or the negligent actions of another person (tort), he or she suffers actual loss or damage.

4. Market value on acquisition

In practice, where relevant, the Board of Inland Revenue will be prepared to accept a valuation which gives rise to neither chargeable gain nor allowable loss.

5. Date of disposal

The right of action is treated as disposed of when a capital sum derived from it is received, and if a series of capital sums is received, each receipt is the occasion of a separate disposal.

6. Rebasing to 31 March 1982

If an asset which was held on 31 March 1982 is disposed of on or after 6 April 1988, the gain or loss is normally computed as if it had been disposed of and immediately reacquired at its open market value on 31 March 1982. If an underlying asset were held on 31 March 1982, but a right of action related to that asset were acquired after 31 March 1982, the rebasing provisions would apply on the disposal of the underlying asset but not on the disposal of the right of action.

7. Reliefs and exemptions

Some forms of compensation are specifically exempted from liability to capital gains tax (see paragraph 12 below) and these remain exempt despite the decision in *Zim Properties*. But other statutory reliefs and exemptions are not available where the

receipt of the compensation is regarded as giving rise to a disposal of the right of action, not of any underlying asset to which the relief or exemption might apply. These include deferment relief for compensation applied in restoring or replacing an asset, roll-over relief for the replacement of business assets, retirement relief and private residence relief.

1.

Relief by concession

Where a gain arises on the disposal of a right of action, the case may alternatively, by concession, be treated in accordance with the following paragraphs of this statement.

9. Underlying assets

Where the right of action arises by reason of the total or partial loss or destruction of or damage to a form of property which is an asset for capital gains tax purposes, or because the claimant suffered some loss or disadvantage in connection with such a form of property, any gain or loss on the disposal of the right of action may by concession be computed as if the compensation derived from that asset, and not from the right of action. As a result a proportion of the cost of the asset, determined in accordance with normal part-disposal rules, and indexation allowance, may be deducted in computing the gain. For example if compensation is paid by an estate agent because his negligence led to the sale of a building falling through, an appropriate part of the cost of the building may be deducted in computing any gain on the disposal of the right of action.

The gain may be computed by reference to the original cost of the underlying asset, with time-apportionment if appropriate if the asset was acquired before 6 April 1965, or by reference to its market value on 6 April 1965. For disposals on or after 6 April 1988, the gain may be computed in appropriate cases by reference to the value of the asset on 31 March 1982.

10. Other reliefs and exemptions

If the relief was or would have been available on the disposal of the relevant underlying asset, it will be available on the disposal of the right of action. For example, if compensation is derived from a cause of action in respect of damage to a building suffered by reason of professional negligence, and the compensation is applied in restoring the building, deferment relief under Section 23, TCGA 1992 will be available as if the compensation derives from the building itself and not from the right of action.

Other reliefs which may become available in this way include private residence relief, retirement relief and roll-over relief. HMRC Board will be prepared to consider extending time limits in cases where because of a delay in obtaining a capital sum in compensation, the normal time limit allowed for a relief has elapsed. If the right of action relates to an asset which is specifically exempt from capital gains tax, such as a motor car, any gain on the disposal of the right of action may be treated as exempt.

11. No underlying asset

A right of action may be acquired by a claimant in connection with some matter which does not involve a form of property which is an asset for capital gains tax purposes. This may be the case where professional advisers are said to have given misleading advice in a tax or other financial matter, or to have failed to claim a tax

relief within proper time. Actions may be brought in relation to private or domestic matters. Where the action does not concern loss of or damage to or loss in connection with a form of property which is an asset for capital gains tax purposes, the approach in paragraph 9 above of treating the compensation as deriving from the asset itself is not appropriate. In these circumstances any gain accruing on the disposal of the right of action will be exempt from capital gains tax.

Other points

12. Personal compensation or damages

Section 51(2), TCGA 1992 provides that 'sums obtained by way of compensation or damages for any wrong or injury suffered by an individual in his person or his profession or vocation' are not chargeable to capital gains tax. The words 'wrong or injury' include breaches of contractual duties and torts (in Scotland, delicts). If the exemption would have applied to damages received for any wrong or injury, it also applies to any compensation for professional negligence in relation to an action in respect of that wrong or injury.

The words 'in his person' are to be read in distinction to 'in his finances' but they embrace more than physical injury so that distress, embarrassment loss of reputation or dignity may all be suffered 'in the person'. Compensation or damages for unfair or unlawful discrimination suffered 'in the person' and for libel or slander (in Scotland defamation) would thus be included. Similarly the words 'in his profession or vocation' refer to compensation or damages suffered by an individual in his professional capacity such as unfair discrimination, libel or slander (in Scotland, defamation) as distinct from 'in his finances'. If the compensation is received by the members of a partnership, each member, in Scotland as elsewhere, is treated as receiving a share of the compensation. The exemption is extended by concession to such compensation received by an individual in his trade or employment.

The exemption also extends to compensation received by a person other than the individual who suffered the wrong or injury, such as relatives or personal representatives of a deceased person. It also extends to compensation for emotional distress caused by the death of another person, and compensation for loss of financial support.

It does not apply to compensation for any other wrong or injury suffered by any person other than an individual.

13. Indemnity payments

The principle in *Zim Properties Ltd* is not regarded as applicable to payments made by the vendor to the purchaser of an asset under a warranty or indemnity included as one of the terms of a contract of purchase and sale.

Where such a contractual payment is made, then the cost of the asset to the person acquiring it will, on the occasion of a further disposal be reduced by the sum received.

The sale proceeds of the person who makes (or is treated by Section 171A TCGA as making) the disposal of the asset are adjusted under Section 49, TCGA 1992 in respect of the sum received. Where a warranty or indemnity payment is not made in accordance with the terms of the contract, the principle in *Zim Properties* may apply and the sums received by the vendor or purchaser as appropriate may be identified as

capital sums derived from the asset, or from the right of action, depending on the facts of the case.

14. Date of commencement

The concessions and practices set out in this Statement will apply to all open cases on the date of issue, 19 December 1988.

D34. Rebasing and indexation: shares held at 31 March 1982

Where, for the purposes of the rebasing provisions in Section 35, TCGA 1992 and the indexation provisions in Section 55, TCGA 1992, it is necessary to determine the market value of shares or securities of the same class in any company on 31 March 1982, all the shares or securities held at that date will be valued as a single holding whether they were acquired on or before 6 April 1965 or after that date.

If the shares or securities in the relevant disposal represent some but not all of those valued at 31 March 1982 then the allowable cost or indexation allowance as appropriate will be based on the proportion that the shares or securities disposed of bears to the total holding at 31 March 1982.

D35. Employee trusts: transfers of assets to beneficiaries- superseded by SI 2009/730)

D36. Relief for irrecoverable loans to traders: time limits for claims – Obsolete

D37. Private residence exemption: relocation arrangements- superseded by SI 2009/730

D38. Capital Gains Tax: qualifying corporate bonds

Where a person acquired corporate bonds in respect of shares or securities and those bonds became, or would fall to be treated as, qualifying corporate bonds by virtue only of Section 139 FA 1989 (see para. 16(4) Schedule 11, TCGA 1992), an allowable loss for capital gains purposes will accrue if:

- the qualifying corporate bonds were issued in respect of shares or other securities before 14 March 1989 and were still retained at that date by the person to whom they were issued.*

- *the bonds were acquired in a transaction within Section 116(1), TCGA 1992 (Section 64(7) FA 1984) and on disposal on or after 14 March 1989 fall to be treated as qualifying corporate bonds as a result of Section 139 FA 1989.*
- *relief under Section 254, TCGA 1992 (Section 136A CGTA 1979) would have been available had the loan been a qualifying loan within Section 254(1).*
- *a taxpayer claiming relief under this concession agrees that if part or all of the amount relieved is subsequently recovered the relief will be clawed back in the same way as if Section 254, TCGA 1992 (Section 136A CGTA 1979) had applied, save that in all cases the chargeable gain will be treated as accruing to the claimant.*
- *when this concession applies, any gain or loss on the original shares or securities will be treated as accruing at the same time as the loss on the bonds in accordance with Section 116(15), TCGA 1992 (paragraph 12, Schedule 13, FA 1984).*

The loss is computed in accordance with the rules in Section 254, TCGA 1992 (Section 136A CGTA 1979) and will be treated as arising when the benefit of this concession is claimed. However, the Inland Revenue will be prepared to accept that any such loss should be treated as arising in an earlier year of assessment (or accounting period in the case of a company) provided that:

- *the claim is made not later than two years after the end of that year of assessment (or accounting period), and*
- *all the conditions for the relief are satisfied at the date of claim, and the relief would have been available at the end of the year of assessment or accounting period for which relief is claimed.*

D39. Extension of leases

Where the extension of a lease other than under its original terms involves the surrender of the old lease and the grant of a new lease, a liability to Capital Gains Tax may strictly arise. In an arm's length transaction, the value, if any, of the new lease is taken into account as consideration for the disposal of the old lease.

In practice, however, the surrender of a lease before its expiry and the grant of a new lease for a longer term will not be regarded as a disposal or part disposal of the old lease where all the following conditions are met:

the transaction, whether made between connected or unconnected parties, is made on terms equivalent to those that would have been made between unconnected parties bargaining at arm's length;

the transaction is not part of, or connected with, a larger scheme or series of transactions;
a capital sum is not received by the lessee;
the extent of the property in which the lessee has an interest under the new lease does not differ in any way from that to which the old lease related;
the terms of the new lease (other than its duration and the amount of rent payable) do not differ from those of the old lease. For this purpose trivial differences will be ignored.

D40. Non-resident trusts: definition of participator

Section 86 and Schedule 5, TCGA 1992 provide for a charge to capital gains tax on settlors of certain non or dual resident trusts arising on trust property which originated from the settlor. Paragraph 8 of the Schedule defines what property originates from the settlor and provides that property put into trust by certain companies is treated as originating from those who control the company in question. Paragraph 9 of the Schedule sets out conditions under which trusts created before 19 March 1991 may fall within the scope of the charge on the settlor, some of which may apply to companies controlled by defined persons.

Sections 87-88 charge UK resident beneficiaries to capital gains tax on certain capital payments received from non- or dual resident settlements. Section 96 is concerned with the application of these provisions to capital payments made by companies which are controlled by the trustees and capital payments received by certain non-resident companies.

For the purpose of determining who controls such companies 'participator' is defined in Section 417(1), ICTA 1988. In applying the provisions of paragraphs 2A(10), 8 and 9(11) of Schedule 5 and section 96 a beneficiary of the trust, by concession, is not regarded as a participator in the company solely because of his status as beneficiary.

D41. Non-resident trusts: loans repayable on demand – Obsolete

D42. Mergers of leases

Where a leaseholder of land acquires a superior interest in that land (either a superior lease or the freehold reversion) so that the first lease is extinguished the two assets are merged within the meaning of Section 43 TCGA 1992. On a subsequent disposal the allowable expenditure will include:

- the cost of the first lease (after exclusion if appropriate of that part 'wasted' down to the date of acquisition of the superior interest (Schedule 8 TCGA 1992, in the case of a lease with 50 years or less to run); and
- the cost of the superior interest.

If the superior interest is itself a lease with 50 years or less to run, the total of these two amounts will be 'wasted' down to the date of disposal under Schedule 8 TCGA 1992. In strictness, indexation allowance on the total of these two amounts is calculated by reference to the date of acquisition of the superior interest. By concession indexation allowance on the earlier, inferior, lease will be calculated by reference to the date of its acquisition.

For disposals before 29 June 1992, indexation allowance will be given by concession for the total of these two amounts by reference to the date of acquisition of the inferior interest.

D43. Settled property

On the death of a person entitled to a life interest in possession in settled property, as defined in Section 68, TCGA 1992, (except where the property reverts to the settlor) the trustees are deemed to have disposed of the property and reacquired it at market value and, subject to Sections 67 and 74 TCGA 1992

- if the property continues to be settled property, by reason of Section 72 TCGA 1992 there is no chargeable gain or allowable loss

- if someone becomes absolutely entitled within Section 71 TCGA 1992, by reason of Section 73 TCGA 1992 there is no chargeable gain or allowable loss.

By concession these provisions will also be applied on the death of a person with any other type of interest in possession in settled property.

Where property continues to be settled property, the concession may be claimed on the subsequent disposal of that property and the market value on date of death shall be reduced by the amount of any outstanding chargeable gain which was held over when that property was transferred to the trustees. The concession may not be claimed for any assets where there is a charge under Sections 67 or 74 TCGA 1992 on the subsequent disposal.

If this concession is claimed, it must apply to all of the assets in which the deceased had an interest in possession, other than any assets for which the CGT computations were settled before 17 February 1993 or are subject to a charge under Sections 67 or 74 TCGA 1992. All references to TCGA 1992 include references to corresponding provisions in earlier legislation.

D44. Rebasing and indexation: shares derived from larger holdings held at 31 March 1982 - Obsolete (SI 2010/157 - The Enactment of Extra-Statutory Concessions Order 2010)

D45. Rollover into depreciating assets

The cessation of use of an asset for the purposes of a trade carried on by a claimant to rollover relief will not be treated as an occasion of charge to capital gains tax under Section 154(2)(b), TCGA 1992, where the cessation occurs on death of the claimant.

D46. Relief against income for capital losses on the disposal of unquoted shares in a trading company - Obsolete

D47. Temporary loss of charitable status due to reverter of school and other sites – Obsolete – withdrawn with effect from 1 April 2010

D48. Retirement relief – Obsolete

D49. Private residence relief: Short delay by owner-occupier in taking up residence

This Concession applies:

where an individual acquires land on which he has a house built, which he then uses as his only or main residence

where an individual purchases an existing house and, before using it as his only or main residence, arranges for alterations or redecorations or completes the necessary steps for disposing of his previous residence.

In these circumstances, the period before the individual uses the house as his only or main residence will be treated as a period in which he so used it for the purposes of Sections 223(1) and 223(2)(a) TCGA 1992, provided that this period is not more than one year. If there are good reasons for this period exceeding one year, which are outside the individual's control, it will be extended up to a maximum of two years.

Where the individual does not use the house as his only or main residence within the period allowed, no relief will be given for the period before it is so used. Where relief is given under this Concession it will not affect any relief due on another qualifying property in respect of the same period.

D50. Treatment of compensation – Obsolete (SI 2010/157 - The Enactment of Extra-Statutory Concessions Order 2010)

D51. Transfers of assets from a close company at undervalue- Obsolete (SI 2009/730)

D52. Share exchanges, company reconstructions and amalgamations: incidental costs of acquisition and warranty payments

This concession applies to

incidental costs of acquisition or disposal which would be allowable under Section 38(1)(a) or (c) TCGA 1992

payments in respect of contingent liabilities as defined in Section 49(1)(c) TCGA 1992 incurred on (i) on, or as a result of, shares or debentures to which Section 135 TCGA 1992 applies, or (ii) under an arrangement as mentioned in Section 136(i) TCGA 1992 which is entered into for the purposes of, or in connection with a 'scheme of

reconstruction' as defined in Schedule 5AA TCGA 1992) in circumstances where Section 136 TCGA 1992 applies.

Any such costs or payments attributable to the new holding of the shares and/or debentures may be treated as consideration given for the shares or debentures. In the case of contingent liabilities the total allowed under Section 49(1)(c) TCGA 1992 and this concession will be restricted to the amount that would have been allowed under Section 49(1)(c) if Sections 135 and 136 TCGA 1992 had not applied.

D53. Section 50 Taxation of Chargeable Gains Act 1992: Grants repaid

Where some or all of the cost of acquiring an asset is met by the Crown or by, any Government, public or local authority, Section 50 TCGA excludes an amount equal to the grant from the allowable acquisition costs in computing the gain on a subsequent disposal. By concession, where the grant is later repaid in whole or in part the consideration received on the disposal of the asset may be treated as reduced by an amount equal to the amount repaid.

This concession will also apply to the extent that it can be demonstrated that repayment of the grant has taken place by way of a corresponding reduction in the amount of a later grant which would otherwise have been made.

E CONCESSIONS RELATING TO ESTATE DUTY

E1. Mourning: As a funeral expense – Obsolete

E2. Property of Roman Catholic religious communities – Obsolete

E3. Liability for inter vivos gifts to charities where no existing fund – Obsolete

E4. Surrender or discharge of prior or legal rights in a Scottish estate – Obsolete

E5. Disclaimer by surviving spouse of rights under an English intestacy – Obsolete

E6. Premium savings bonds and savings contracts under the Save As You Earn scheme held by persons who die domiciled in the Channel Islands, the Isle of Man or Northern Ireland – Obsolete

E7. Settlement funds: allowance for, or repayment of legacy or succession duty – Obsolete

E8. Agricultural property: intensive rearing of livestock or fish – Obsolete

E9. Sales, within three years of death, of objects of national, scientific, historic or artistic interest on which exemption has been allowed: allowance for CGT for deaths on or before 31 March 1971- Obsolete

- E10. Residuary legatee entitled to income from property held to provide a pecuniary legacy – Obsolete*
- E11. Interest in partnership including agricultural property among its assets – Obsolete*
- E12. Deaths of members of the Royal Ulster Constabulary – Obsolete*
- E13. Blocked foreign assets – Obsolete*
- E14. Property chargeable on the ceasing of an annuity- Obsolete*
- E15. Company shares: death duty payable in a country outside the United Kingdom – Obsolete*
- E16. Death benefits payable as of right to the estate of a deceased member of the Post Office Superannuation Scheme - Obsolete*
- E17. Graduation of charge under Section 2(1)(b), Finance Act 1894 (as substituted by Section 36(2), Finance Act 1969) for deaths before 20 March 1970 - Obsolete*
- E18. Settlement made in consideration of marriage for deaths after 15 April 1969 - Obsolete*
- E19. Individual ceasing to benefit under discretionary trust which continued in existence after 15 April 1969 - Obsolete*
- E20. Company shares: death duty payable in a country with which the United Kingdom has a double taxation agreement - Obsolete*
- E21. Works of art sent from abroad for public exhibition in this country - Obsolete*
- E22. Inter vivos gifts: deduction for development gains tax- Obsolete*

F CONCESSIONS RELATING TO INHERITANCE TAX

- F1. Mourning: As a funeral expense - Obsolete - withdrawn with effect from 9 December 2010*
- F2. Property of Roman Catholic religious communities- Obsolete - withdrawn with effect from 9 December 2010*
- F3. NOW J1.**
- F4. NOW J2.**
- F5. Deaths of members of the Police Service of Northern Ireland**

The relief from inheritance tax under Section 154 IHTA 1984, granted in certain circumstances to the estates of members of the armed forces, is applied to the estates

of members of the Police Service of Northern Ireland who die from injuries caused in Northern Ireland by terrorist activity.

F6. Blocked foreign assets

Where, because of restrictions imposed by the foreign government, executors who intend to transfer to this country sufficient of the deceased's foreign assets for the payment of the inheritance tax attributable to them cannot do so immediately, they are given the option of deferring payment until the transfer can be effected. If the amount in sterling that the executors finally succeed in bringing to this country is less than this tax, the balance is waived.

F7. Foreign owned works of art- obsolete (SI 2009/730)

F8. Accumulation and maintenance settlements

The requirement of Section 71(1)(a) IHTA 1984 is regarded as being satisfied even if no age is specified in the trust instrument, provided that it is clear that a beneficiary will in fact become entitled to the settled property (or to an interest in possession in it) by the age of 25.

F9. NOW J3.

F10. Partnership assurance policies

A partnership assurance scheme under which each partner effects a policy on his own life in trust for the other partners is not regarded as a settlement for inheritance tax purposes if the following conditions are fulfilled.

- (a) The premiums paid on the policy fall within Section 10 IHTA 1984 (exemption for dispositions not intended to confer a gratuitous benefit to any person);
- (b) the policy was effected prior to 15 September 1976 and has not been varied on or after that date (but the exercise of a power of appointment under a 'discretionary' trust policy would not be regarded as a variation for this purpose); and
- (c) the trusts of the policy are governed by English law or by Scots law, provided that in the latter case the policy does not directly or indirectly involve a partnership itself as a separate persona.

F11. Property chargeable on the ceasing of an annuity

Where an inheritance tax charge arises when an annuitant under a settlement either dies or disposes of his interest and

- (i) the annuity is charged wholly or in part on real or leasehold property, and

(ii) the Board is satisfied that a capital valuation of the property at the relevant date restricted to its existing use, reflects an anticipated increase in rents obtainable for that use after that date
appropriate relief will be given in calculating the proportion of the property on which tax is chargeable.

F12. Disposition for maintenance of dependent relative

A disposition by a child in favour of his unmarried mother (so far as it represents a reasonable provision for her care or maintenance) qualifies for exemption under Section 11(3) IHTA 1984 if the mother is incapacitated by old age or infirmity from maintaining herself. By concession such a disposition is also treated as exempt if the mother (although not so incapacitated) is genuinely financially dependent on the child making the disposition.

F13. Subsequent devolutions of property under the wills of persons dying before 12 March 1952 whose estates were wholly exempted from estate duty under Section 8(1) FA 1894.

Where a person died before 12 March 1952 and his estate was wholly exempted from estate duty as the property of a common seaman, marine or soldier who died in the service of the Crown and under his will he left a limited interest to someone who dies on or after 12 March 1975, inheritance tax is not charged on any property exempted on the original death which passes under the terms of the will on the termination of the limited interest.

F14. NOW J4.

F15. Woodlands

Paragraph 46 Schedule 19 Finance Act 1986 denies potentially exempt transfer treatment for inheritance tax purposes to all property comprised in a single transfer any part of which, however small, is woodlands subject to a deferred estate duty charge. By concession the scope of this paragraph will henceforth be restricted solely to that part of the value transferred which is attributable to the woodlands which are the subject of the deferred charge.

F16. Agricultural property and farm cottages

On a transfer of agricultural property which includes a cottage occupied by a retired farm employee or their widow (er), the condition in Sections 117 and 169 IHTA1984 concerning occupation for agricultural purposes is regarded as satisfied with respect to the cottage if either
the occupier is a statutorily protected tenant, or

the occupation is under a lease granted to the farm employee for his/her life and that of any surviving spouse as part of the employee's contract of employment by the landlord for agricultural purposes.

F17. Relief for agricultural property

On a transfer of tenanted agricultural land, the condition in Section 116(2)(a) IHTA 1984 is regarded as satisfied where the transferor's interest in the property either carries a right to vacant possession within 24 months of the date of the transfer, or is, notwithstanding the terms of the tenancy, valued at an amount broadly equivalent to the vacant possession value of the property.

F18. Treatment of income tax in Canada on capital gains deemed to arise on a person's death

1. Under Section 5(3) IHTA 1984 a person's liabilities at the time of death are taken into account in arriving at the value of their estate for the purposes of inheritance tax. The Board of Inland Revenue will by concession regard this provision as applying to income tax in Canada charged on a deemed disposal immediately before death, even though the liability may not in strictness have arisen until the person had died.

2. Where there is an inheritance tax charge on a deceased person's world-wide estate, and income tax in Canada is charged on deemed gains which are attributable to assets forming part of that estate, the Canadian tax will rank as a deduction in arriving at the value of the estate for inheritance tax purposes. The Canadian tax will normally be treated as reducing the value of assets outside the United Kingdom whether those assets are liable to inheritance tax or not; but if the Canadian tax exceeds the value of those assets, the excess will be set off against the value of the United Kingdom assets.

F19. Decorations awarded for valour or gallant conduct exempt from IHT- Obsolete - superseded by (SI 2009/73)

F20. Late compensation for World War II claims

Schemes continue to be established in the UK and abroad which provide compensation for wrongs suffered during the World War II era. When this is received by the original victim or their surviving spouse, this almost inevitably comes late in life when their plans for the disposal of their wealth have already been made. Ministers have agreed that the cash value of these claims may be excluded from inheritance tax in the following cases where compensation is paid in modest round-sum, or otherwise cash-limited, amounts:

single ex-gratia lump sums of £10,000 payable to each surviving member of the British groups - or their surviving spouse - interned or imprisoned by the Japanese during World War II as announced by the Government on 7 November 2000;

financial compensation of fixed amounts payable from the German foundation 'Remembrance, Responsibility and Future' or the Austrian Reconciliation Fund to claimants - or their surviving spouse - who were slave or forced labourers or other victims of the National Socialist regime during World War II;

financial compensation of \$1,000 payable from the Holocaust Victim Assets Litigation (Swiss Bank Settlement) to each of the slave or forced labourers qualifying under the aforementioned German foundation scheme;

financial compensation by way of fixed amounts to the victim or their surviving spouse from the Swiss Refugee Programme;

financial compensation by way of fixed amounts to the victim or their surviving spouse from Stichting Maror-Gelden Overheid (Dutch Maror);

and

financial compensation by way of a one-time payment to the victim or their surviving spouse from the following:

- monies allocated by the Federal German Government (the Hardship Fund);
- the Austrian National Fund for Victims of Nazi Persecution;
- the French Orphan Scheme.

Payments of this kind would normally increase the value of a deceased person's chargeable estate at death, either because a claim paid in their lifetime has increased their total assets, or because the right to a claim not yet paid is itself an asset of their estate.

By concession, where such a payment has been received at any time, either by the deceased or his or her personal representatives under the arrangements, the amount of the payment may be left out of account in determining the chargeable value of his or her estate for the purposes of inheritance tax on death. Similarly, where a person qualifies for more than one payment then each amount may be left out of account.

All enquiries about this extra-statutory concession in particular cases (quoting the full name and date of death of the deceased plus the Inland Revenue Capital Taxes reference number if known) should be directed to:

Inland Revenue Capital Taxes - IHT

Ferrers House

PO Box 38
89

Castle Meadow Road
Nottingham NG2 1BB
For members of the DX system:
Inland Revenue Capital Taxes
DX 701201
NOTTINGHAM 4

G. CONCESSIONS RELATING TO STAMP DUTIES

G1. Stamp allowance on lost documents – Obsolete

G2. Stamping of replicas of documents which have been spoilt or lost – Obsolete

G3. Group life and pension policies – Obsolete

G4. Repayment of duty on cancelled policies of insurance – Obsolete

G5. Transfer of stock from persons to themselves operating as an executors' assent

Stamp duty is not claimed on transfer of stock in a company registered in England, Wales or Northern Ireland from a person to himself (or from two or more persons to themselves) which operates as an executors' assent. The point does not arise in relation to companies registered in Scotland

G6. Transfers of assets between non-profit making bodies with similar objects

When the reconstruction of a non-profit making body with objects in a field of public interest such as education, community work or scientific research, or the amalgamation of two or more such bodies involves a transfer to the successor body of assets for which there passes no consideration in money or money's worth, the instruments of transfer are treated as exempt from ad valorem stamp duty and charged to £5 fixed duty only. There must be sufficient identity between the members of the transferor and transferee bodies and the rules of both must prohibit the distribution of assets to members and provide that on a winding-up the assets can only be transferred to a similar body subject to like restrictions.

G7. Transfers of stock into SEPON - Replaced by Section 191 FA 1996. - Obsolete

G8. Stock Loan Returns - Replaced by Section 191 FA 1996. - Obsolete

G9. Transfers of Collateral - Replaced by Section 191 FA 1996. - Obsolete

H. CONCESSIONS RELATING TO DEVELOPMENT LAND TAX (INDIVIDUALS AND COMPANIES)

H1. Sums received by way of compensation for damage to land – Obsolete

H2. Development of land for industrial use by prospective traders - Obsolete

I. CONCESSIONS RELATING TO PETROLEUM REVENUE TAX

11. Gas and the oil allowance- Obsolete (SI 2009/730)

12. Direct exports from tanker-loading fields - Obsolete This concession is now incorporated in Sections 55 & 74 and Schedule 18 Part VIII F (No 2) A 1992.

13. Paragraph 9, Schedule 3, Oil Taxation Act 1975

Paragraph 9, Schedule 3, OTA 1975 allows a participator in an oilfield to elect to have petroleum revenue tax relief for certain expenditure (broadly, capital expenditure on field development) spread over a period rather than allowed immediately. Sub-paragraph 5 of paragraph 9 imposes a time limit for making such an election. The limit is 3 months after the end of the relevant chargeable period with an extended time limit for the first four chargeable periods. Up to and including 1982, the 3 month time limit was consistent with the period within which assessments to petroleum revenue tax were made. When paragraph 19, Schedule 19, FA 1982 extended the time for making assessments from 3 months to 5 months, however, a consequential change to the expenditure election time limit was not made. By concession, the time limit for making an election to spread expenditure has also been extended from 3 months to 5 months.

14. Section 9(5), OTA 1983: tariff receipts allowance in respect of foreign “user” fields

Section 9, OTA 1983 provides a tariff receipts allowance to the participators in an oil field for each six month chargeable period for which the field is liable to Petroleum Revenue Tax (PRT) in respect of qualifying tariff receipts attributable to the field. The allowance is given in respect of each field using the asset giving rise to the tariff receipts. For this purpose a “user” field can be another United Kingdom field or a foreign field, but in the latter case the field must be one which has been specified as a foreign field for the purposes of the Act by an order made by statutory instrument by the Secretary of State for Trade and Industry. The allowance is not due in respect of any tariffs received or receivable from a foreign field prior to the order being made even though the tariffs themselves are chargeable to PRT from the time they first arise under the normal charging provisions of Section 6 of the Act. By concession, relief is now to be given, once an order specifying the foreign field has been made, back to the date on which tariffs were first received or receivable from the foreign field in question.

15. Petroleum Revenue Tax instalments

Paragraph 3(1), Schedule 19, Finance Act 1982 entitles a participator, on giving notice to the Board, to withhold the instalment due for a month under paragraph 2 of the Schedule if, in the previous month, he did not deliver or relevantly appropriate any of the oil won from the field. By concession, a participator is also entitled, again on giving notice to the Board, to withhold the instalment for a month if in the previous or an earlier month, oil actually ceased to be won from the field as a result of some

sudden catastrophic loss of or damage to production, transportation or initial treatment facilities relating to the field, and has not recommenced.

J. CONCESSIONS RELATING TO CAPITAL TRANSFER TAX ONLY

J1. Inter vivos gifts to charities

Where, at the donor's death, there is no existing fund which has been and continues to be directly benefited by the gift, the claim to tax is not pursued against the charitable institution.

J2. Agricultural property

For the purposes of the capital transfer tax relief for agricultural property, buildings used in connection with the intensive rearing of livestock or fish on a commercial basis for the production of food for human consumption are treated as 'agricultural property'.

J3. Relief for successive charges – Obsolete

J4. Inter vivos gifts: deduction for Development Gains Tax and Development Land Tax - Obsolete

These notes are for guidance only and reflect the tax position at the time of writing. They do not affect your right of appeal.

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