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Finance Act, 2008

Section 45 - Homes outside UK owned through company etc

1) In ITEPA 2003, after section 100 insert- "100A Homes outside UK owned through company etc (1) This Chapter does not apply to living accommodation outside the United Kingdom provided by a company for a director or other officer of the company ("D") or a member of D's family or household if- (a) the company is wholly owned by D or D and other individuals (and no interest in the company is partnership property), and (b) the company has been the holding company of the property at all times after the relevant time. (2) The company is "the holding company of the property" when- (a) it owns a relevant interest in the property, (b) its main or only asset is that interest, and (c) the only activities undertaken by it are ones that are incidental to its ownership of that interest. (3) The company is also "the holding company of the property" when- (a) a company ("the subsidiary") which is wholly owned by the company meets the conditions in paragraphs (a) to (c) of subsection (2), (b) the company's main or only asset is its interest in the subsidiary, and (c) the only activities undertaken by the company are ones that are incidental to its ownership of that interest. (4) "Relevant interest in the property" means an interest under the law of any territory that confers (or would but for any inferior interest confer) a right to exclusive possession of the property at all times or at certain times. (5) "The relevant time" is the time the company first owned a relevant interest in the property; but this is subject to subsection (6). (6) If- (a) none of D's interest in the company was acquired directly or indirectly from a person connected with D, and (b) the company owned a relevant interest in the property at the time D first acquired an interest in the company, "the relevant time" is the time D first acquired such an interest. 100B Section 100A(1): exceptions (1) Section 100A(1) does not apply if subsection (2), (3) or (4) applies. (2) This subsection applies if- (3) This subsection applies if, at any time after the relevant time- (4) This subsection applies if the living accommodation is provided in pursuance of an arrangement the main purpose, or one of the main purposes, of which is the avoidance of tax or national insurance contributions. (5) In subsection (2) references to the acquisition of an interest include the grant of an interest. (6) For the purposes of that subsection, an interest is acquired at an undervalue if the total consideration for it is less than that which might reasonably have been expected to be obtained on a disposal of the interest on the open market; and "consideration" here means consideration provided at any time (and, for example, includes payments by way of rent). (7) For the purposes of subsection (3)(b), no account is to be taken of- (8) In subsection (4) "arrangement" includes any scheme, agreement or understanding, whether or not enforceable. (9) In this section "connected company" means- (2) The amendment made by subsection (1) is treated as always having had effect. (3) Section 145 of ICTA (living accommodation provided for employee) is to be treated as never having applied to living accommodation outside the United Kingdom provided in circumstances in which, had it been provided on or after 6 April 2003, section 100A(1) of ITEPA 2003 would cause Chapter 5 of Part 3 of ITEPA 2003 (taxable benefits: living accommodation) not to apply.

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