



# Finance Act 2001

## 2001 CHAPTER 9

### PART 2

#### AGGREGATES LEVY

##### *Other special cases*

#### **35 Groups of companies etc**

- (1) Schedule 9 to this Act (which provides for two or more bodies corporate to be treated as members of the same group for the purposes of this Part) shall have effect.
- (2) Any aggregates levy with which a body corporate is charged in respect of aggregate subjected to commercial exploitation at a time when the body is a member of a group shall be treated for the purposes of this Part as if it were the representative member for that group (instead of that body) which is charged with the levy.
- (3) All the bodies corporate who are members of a group when any aggregates levy becomes due from the representative member, together with any bodies corporate who become members of the group while any such levy remains unpaid, shall be jointly and severally liable for any aggregates levy due from the representative member.
- (4) Subject to subsections (2) and (3) above, the Commissioners may by regulations make such provision as they consider appropriate about—
  - (a) the person by whom any obligation or liability imposed by or under this Part is to be performed or discharged, and
  - (b) the manner in which it is to be performed or discharged,in a case where the person who (apart from the regulations) would be subject to the obligation or liability is one of a number of bodies corporate registered in the name of the representative member for a group.
- (5) References in this section to aggregates levy being or becoming due from the representative member include references to any amounts being or becoming recoverable as if they were aggregates levy due from that member.

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*Status: This is the original version (as it was originally enacted).*

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- (6) For the purposes of this Part—
- (a) a body corporate is a member of a group at any time in relation to which it falls to be treated as such a member in accordance with Schedule 9 to this Act; and
  - (b) the body corporate which is to be taken to be the representative member for a group at any time is the member of the group which in relation to that time is the representative member under that Schedule in the case of that group.

### **36 Partnerships and other unincorporated bodies**

- (1) The Commissioners may by regulations make provision for determining by what persons anything required to be done under this Part is to be done where, apart from those regulations, that requirement would fall on—
- (a) persons carrying on business in partnership; or
  - (b) persons carrying on business together as an unincorporated body;
- but any regulations under this subsection must be construed subject to the following provisions of this section.
- (2) In determining for the purposes of this Part who at any time is the person chargeable with any aggregates levy where the persons responsible for subjecting any aggregate to commercial exploitation are persons carrying on any business—
- (a) in partnership, or
  - (b) as an unincorporated body,
- the firm or body shall be treated, for the purposes of that determination (and notwithstanding any changes from time to time in the members of the firm or body), as the same person and as separate from its members.
- (3) Without prejudice to section 36 of the Partnership Act 1890 (c. 39) (rights of persons dealing with firm against apparent members of firm), where—
- (a) persons have been carrying on in partnership any business in the course or furtherance of which any aggregate has been subjected to commercial exploitation, and
  - (b) a person ceases to be a member of the firm,
- that person shall be regarded for the purposes of this Part (including subsection (7) below) as continuing to be a partner until the date on which the change in the partnership is notified to the Commissioners.
- (4) Where a person ceases to be a member of a firm during an accounting period (or is treated as so ceasing by virtue of subsection (3) above) any notice, whether of assessment or otherwise, which—
- (a) is served on the firm under or for the purposes of any provision made by or under this Part, and
  - (b) relates to, or to any matter arising in, that period or any earlier period during the whole or part of which he was a member of the firm,
- shall be treated as served also on him.
- (5) Without prejudice to section 16 of the Partnership Act 1890 (c. 39) (notice to acting partner to be notice to the firm), any notice, whether of assessment or otherwise, which—
- (a) is addressed to a firm by the name in which it is registered, and
  - (b) is served in accordance with this Part,

shall be treated for the purposes of this Part as served on the firm and, accordingly, where subsection (4) above applies, as served also on the former partner.

- (6) Subject to subsection (7) below, nothing in this section shall affect the extent to which, under section 9 of the Partnership Act 1890 (liability of partners for debts of the firm), a partner is liable for aggregates levy owed by the firm.
- (7) Where a person is a partner in a firm during part only of an accounting period, his personal liability for aggregates levy incurred by the firm in respect of aggregate subjected to commercial exploitation in that period shall include, but shall not exceed, such proportion of the firm's liability as may be just and reasonable in the circumstances.

### **37 Insolvency etc**

- (1) The Commissioners may by regulations make provision in accordance with the following provisions of this section for the application of this Part in cases in which an insolvency procedure is applied to a person or to a deceased person's estate.
- (2) The provision that may be contained in regulations under this section may include any or all of the following—
  - (a) provision requiring any such person as may be prescribed to give notification to the Commissioners, in the prescribed manner, of the prescribed particulars of any relevant matter;
  - (b) provision requiring a person to be treated, to the prescribed extent, as if, for the purposes of this Part or such of its provisions as may be prescribed, he were the same person as the subject of the procedure; and
  - (c) provision for securing continuity in the application of any of the provisions of this Part where, by virtue of any regulations under this section, any person is treated as if he were the same person as the subject of the procedure.
- (3) In subsection (2) above "relevant matter", in relation to a case in which an insolvency procedure is applied to any person or estate, means—
  - (a) the application of that procedure to that person or estate;
  - (b) the appointment of any person for the purposes of the application of that procedure;
  - (c) any other matter relating to—
    - (i) the application of that procedure to the subject of the procedure or to his estate;
    - (ii) the holding of an appointment made for the purposes of that procedure; or
    - (iii) the exercise or discharge of any powers or duties conferred or imposed on any person by virtue of such an appointment.
- (4) Regulations made by virtue of subsection (2)(b) above may include provision for a person to cease, on the occurrence of such an event as may be prescribed, to be treated as if he were the same person as the subject of the procedure.
- (5) Regulations under this section prescribing the manner in which any notification is to be given to the Commissioners may require it to be given in such manner and to contain such particulars as may be specified in a general notice published by the Commissioners in accordance with the regulations.

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- (6) Regulations under this section may provide that the extent to which, and the purposes for which, a person is to be treated under the regulations as if he were the same person as the subject of the procedure may be determined by reference to a notice given in accordance with the regulations to the person so treated.
- (7) For the purposes of this section, an insolvency procedure is applied to a person if—
- (a) a bankruptcy order, winding-up order or administration order is made in relation to that person or a partnership of which he is a member;
  - (b) an award of sequestration is made in relation to that person's estate or the estate of a partnership of which he is a member;
  - (c) that person is put into administrative receivership;
  - (d) that person passes a resolution for voluntary winding up;
  - (e) any voluntary arrangement approved in accordance with—
    - (i) Part 1 or 8 of the Insolvency Act 1986 (c. 45), or
    - (ii) Part II or Chapter II of Part VIII of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)),
 comes into force in relation to that person or a partnership of which that person is a member;
  - (f) a deed of arrangement registered in accordance with—
    - (i) the Deeds of Arrangement Act 1914 (c. 47), or
    - (ii) Chapter I of Part VIII of that Order,
 takes effect in relation to that person;
  - (g) a person is appointed as the receiver or manager of some or all of that person's property, or of income arising from some or all of his property;
  - (h) a person is appointed as the interim receiver of some or all of that person's property under section 286 of the Insolvency Act 1986 or Article 259 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/ 2405 (N.I. 19));
  - (i) a person is appointed as the provisional liquidator in relation to that person under section 135 of that Act or Article 115 of that Order;
  - (j) an interim order is made under Part 8 of that Act, or Chapter II of Part VIII of that Order, in relation to that person; or
  - (k) that person's estate becomes vested in any other person as that person's trustee under a trust deed (within the meaning of the Bankruptcy (Scotland) Act 1985 (c. 66)).
- (8) For the purposes of this section, an insolvency procedure is applied to a deceased person's estate if—
- (a) after that person's death—
    - (i) a bankruptcy order, or
    - (ii) an order with corresponding effect but a different name,
 is made in relation to that person's estate under any of the provisions of the Insolvency Act 1986 (c. 45) or the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19) ) as they are applied to the administration of the insolvent estates of deceased persons; or
  - (b) an award of sequestration is made on that person's estate after his death.
- (9) In subsection (7) above—

- (a) the reference to any administration order is a reference to an administration order under section 8 of the Insolvency Act 1986 or Article 21 of the Insolvency (Northern Ireland) Order 1989;
  - (b) the reference to a person being put into administrative receivership is a reference to the appointment in relation to him of an administrative receiver, within the meaning of section 251 of that Act of 1986 or Article 5(1) of that Order of 1989; and
  - (c) references to a member of a partnership include references to any person who is liable as a partner under section 14 of the Partnership Act 1890 (c. 39) (persons liable by “holding out”).
- (10) In this section “the subject of the procedure”, in relation to the application of any insolvency procedure, means the person to whom, or to whose estate, the procedure is applied.

### **38 Death and incapacity**

- (1) The Commissioners may, in accordance with subsection (2) below, by regulations make provision for the purposes of aggregates levy in relation to cases where a person carries on a business of an individual who has died or become incapacitated.
- (2) The provisions that may be contained in regulations under this section are—
- (a) provision requiring the person who is carrying on the business to inform the Commissioners of the fact that he is carrying on the business and of the event that has led to his carrying it on;
  - (b) provision allowing that person to be treated for a limited time as if he and the person who has died or become incapacitated were the same person; and
  - (c) such other provision as the Commissioners think fit for securing continuity in the application of this Part where a person is so treated.

### **39 Transfer of a business as a going concern**

- (1) The Commissioners may by regulations make provision for securing continuity in the application of this Part in cases where any business carried on by a person is transferred to another person as a going concern.
- (2) Regulations under this section may, in particular, include any or all of the following—
- (a) provision requiring the transferor to inform the Commissioners of the transfer;
  - (b) provision for liabilities and duties under this Part of the transferor to become, to such extent as may be provided by the regulations, liabilities and duties of the transferee;
  - (c) provision for any right of either of them to a tax credit or repayment of aggregates levy to be satisfied by allowing the credit or making the repayment to the other;
  - (d) provision as to the preservation of any records or accounts relating to the business which, by virtue of any regulations under paragraph 2 of Schedule 7 to this Act, are required to be preserved for any period after the transfer.
- (3) Regulations under this section may provide that no such provision as is mentioned in paragraph (b) or (c) of subsection (2) above shall have effect in relation to any transferor and transferee unless an application for the purpose has been made by them under the regulations.