



# Corporation Tax Act 2010

## 2010 CHAPTER 4

### PART 22

#### MISCELLANEOUS PROVISIONS

### CHAPTER 7

#### RECOVERY OF UNPAID CORPORATION TAX DUE FROM NON-UK RESIDENT COMPANY

#### **973 Introduction to Chapter**

- (1) This Chapter enables unpaid corporation tax due from a non-UK resident company to be recovered from a related company.
- (2) See also Chapter 6 of Part 14 (recovery of unpaid corporation tax from a linked person in some cases where there is a change in the ownership of a company).
- (3) In subsection (1) and the following provisions of this Chapter, “company” means any body corporate.
- (4) For the meaning of “related company”, see section 976.

#### **974 Case in which this Chapter applies**

- (1) This Chapter applies if—
  - (a) an amount of corporation tax has been assessed on a company for an accounting period,
  - (b) the whole or any part of that amount is unpaid at the end of the period of 6 months after the time when it became payable, and
  - (c) the company is non-UK resident.
- (2) In this Chapter “the taxpayer company” means the company mentioned in subsection (1).

### **975 Meaning of “the relevant period”**

In this Chapter “the relevant period”, in relation to an amount of unpaid corporation tax for an accounting period of the taxpayer company, means the period—

- (a) beginning 12 months before the start of the accounting period, and
- (b) ending when the unpaid tax became payable.

### **976 Meaning of “related company”**

- (1) A company is a “related company”, for the purposes of this Chapter, if, at any time in the relevant period, it was a member—
  - (a) of the same group as the taxpayer company,
  - (b) of a consortium which at that time owned the taxpayer company, or
  - (c) of the same group as a company which at that time was a member of a consortium owning the taxpayer company.
- (2) For the purposes of subsection (1)(a), two companies are members of the same group if—
  - (a) one is the 51% subsidiary of the other, or
  - (b) both are 51% subsidiaries of a third company.
- (3) For the purposes of subsection (1)(c), two companies are members of the same group if they are members of the same group of companies within the meaning of Part 5 (group relief).
- (4) For the purposes of this Chapter—
  - (a) a company is a member of a consortium if it is a member of a consortium within the meaning of Part 5, and
  - (b) a company is owned by a consortium if it is owned by a consortium within the meaning of that Part.

### **977 Notice requiring payment of unpaid tax**

- (1) An officer of Revenue and Customs may serve a notice on a related company requiring it, within 30 days of the service of the notice, to pay—
  - (a) in a case which is not a consortium case, the amount of the unpaid tax, or
  - (b) in a consortium case, the proportion of that amount found under section 979.
- (2) The notice must state—
  - (a) the amount of corporation tax assessed on the taxpayer company for the accounting period in question that remains unpaid,
  - (b) the date when it first became payable, and
  - (c) the amount which is to be paid by the company on which the notice is served.
- (3) The notice has effect—
  - (a) for the purposes of the recovery from that company of the amount required to be paid and of interest on that amount, and
  - (b) for the purposes of appeals,as if it were a notice of assessment and that amount were an amount of tax due from that company.

- (4) In this Chapter “consortium case” means a case where the related company is not within section 976(1)(a).

### **978 Time limit for giving notice**

- (1) A notice under this Chapter must be served before the end of the period of 3 years beginning with the date when the liability of the taxpayer company to corporation tax for the accounting period in question is finally determined.
- (2) If the unpaid tax is charged as a result of a determination under paragraph 36 or 37 of Schedule 18 to FA 1998 (determination where no return delivered or return incomplete), the date mentioned in subsection (1) is taken to be the date when the determination is made.
- (3) If the unpaid tax is charged in a self-assessment, the date mentioned in subsection (1) is taken to be the latest of—
- (a) the last date when notice of enquiry may be given into the return containing the self-assessment,
  - (b) if notice of enquiry is given, 30 days after the enquiry is completed,
  - (c) if more than one notice of enquiry is given, 30 days after the last notice of completion,
  - (d) if after such an enquiry an officer of Revenue and Customs amends the return, 30 days after notice of the amendment is issued, and
  - (e) if an appeal is brought against such an amendment, 30 days after the appeal is finally determined.
- (4) If the unpaid tax is charged in a discovery assessment, the date mentioned in subsection (1) is taken to be—
- (a) if there is no appeal against the assessment, the date when the tax becomes due and payable, or
  - (b) if there is such an appeal, the date when the appeal is finally determined.
- (5) The reference in subsection (3) to a self-assessment includes a self-assessment that supersedes a determination (see paragraph 40 of Schedule 18 to FA 1998).

### **979 Amount payable in consortium case**

- (1) In a consortium case, the amount that the related company may be required to pay by notice under this Chapter is the proportion of the unpaid tax corresponding—
- (a) if the company is only within section 976(1)(b), to the share which the company has had in the consortium for the relevant period,
  - (b) if the company is only within section 976(1)(c), to the share which companies that have been members of the same group of companies as the company have had in the consortium for the relevant period, or
  - (c) if the company is within section 976(1)(b) and (c), to whichever is the greater of the amounts given by paragraphs (a) and (b).
- (2) For the purposes of this section, a member’s share in a consortium, in relation to the relevant period, is whichever is the lowest in that period of the percentages specified in subsection (3).
- (3) Those percentages are—

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

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- (a) the percentage of the ordinary share capital of the taxpayer company which is beneficially owned by the member,
  - (b) the percentage to which the member is beneficially entitled of any profits available for distribution to equity holders of the taxpayer company, and
  - (c) the percentage to which the member would be beneficially entitled of any assets of the taxpayer company available for distribution to its equity holders on a winding up.
- (4) If any of the percentages mentioned in subsection (3) has fluctuated in the relevant period, the average percentage over the period is to be taken.
- (5) Chapter 6 of Part 5 (equity holders and profits or assets available for distribution) applies for the purposes of subsection (3) as it applies for the purposes of sections 143(3)(b) and (c) and 144(3)(b) and (c).

**980 Chapter 7: supplementary**

- (1) A company that has paid an amount in pursuance of a notice under this Chapter may recover that amount from the taxpayer company.
- (2) A payment in pursuance of a notice under this Chapter is not allowed as a deduction in calculating income, profits or losses for any tax purposes.