

SCHEDULES

SCHEDULE 7

MISCELLANEOUS RELOCATIONS

PART 10

RELOCATION OF SECTIONS 130 TO 132 OF FA 1988

Taxes Management Act 1970 (c. 9)

- 53 TMA 1970 is amended as follows.
54 After section 109A insert—

“Companies ceasing to be UK resident

109B Provisions for securing payment by company of outstanding tax

- (1) Each of conditions A to D must be met before a company ceases to be resident in the United Kingdom.
- (2) Condition A is that the company gives to the Commissioners for Her Majesty’s Revenue and Customs notice of its intention to cease to be resident in the United Kingdom.
- (3) Condition B is that the notice specifies the time (“the migration time”) when the company intends to cease to be resident in the United Kingdom.
- (4) Condition C is that the company gives to the Commissioners—
 - (a) a statement of the amount which, in its opinion, is the amount of the tax which is or will be payable by it in respect of periods beginning before the migration time, and
 - (b) particulars of the arrangements which it proposes to make for securing the payment of that tax.
- (5) Condition D is that—
 - (a) arrangements are made by the company for securing the payment of the tax which is or will be payable by it in respect of periods beginning before the migration time, and
 - (b) those arrangements, as made by the company, are approved for the purposes of this subsection by the Commissioners.
- (6) If any question arises as to the amount which, for the purposes of subsection (5), should be regarded as the amount of tax which is or will be payable by the company in respect of periods beginning before the migration time, that question is to be referred to the tribunal.

Status: This is the original version (as it was originally enacted).

- (7) A decision of the tribunal under subsection (6) is final, despite sections 11 and 13 of the TCEA 2007 (appeals from tribunal decisions).
- (8) If any information furnished by the company for the purpose of securing the Commissioners' approval under subsection (5) does not fully and accurately disclose all facts and considerations material for the Commissioners' decision under that subsection, any resulting approval is void.

109C Penalty for company's failure to comply with section 109B

If a company ceases to be resident in the United Kingdom at a time before each of conditions A to D in section 109B is met, the company is liable to a penalty not exceeding the amount of tax—

- (a) which is or will be payable by it in respect of periods beginning before that time, and
- (b) which has not been paid at that time.

109D Penalty for other persons if company fails to comply with section 109B

- (1) Subsection (5) applies if—
 - (a) condition E is met, and
 - (b) either of conditions F and G is met.
- (2) Condition E is that in relation to a company ("the migrating company") any person ("P") does or is party to the doing of any act which to P's knowledge amounts to or results in, or forms part of a series of acts which together amount to or result in, or will amount to or result in, the migrating company ceasing to be resident in the United Kingdom at a time before each of conditions A to D in section 109B is met.
- (3) Condition F is that P is—
 - (a) a director of the migrating company,
 - (b) a company which has control of the migrating company, or
 - (c) a director of a company which has control of the migrating company.
- (4) Condition G is that the act mentioned in subsection (2) is a direction or instruction given—
 - (a) to persons within subsection (3), but
 - (b) otherwise than by way of advice given by a person acting in a professional capacity.
- (5) If this subsection applies, P is liable to a penalty not exceeding the amount of tax—
 - (a) which is or will be payable by the migrating company in respect of periods beginning before the time mentioned in subsection (2), and
 - (b) which has not been paid at that time.
- (6) Subsections (7) and (8) apply for the purposes of any proceedings against a person within subsection (3) for the recovery of a penalty under subsection (5).

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

- (7) It is to be presumed that the person was party to every act of the migrating company unless the person proves that it was done without the person's consent or connivance.
- (8) It is to be presumed, unless the contrary is proved, that any early-migration act was to the person's knowledge an early-migration act.
- (9) In subsection (8) "early-migration act" means an act which in fact amounted to or resulted in, or formed part of a series of acts which together amounted to or resulted in, or would amount to or result in, the migrating company ceasing to be resident in the United Kingdom at a time before each of conditions A to D in section 109B is met.

109E Liability of other persons for unpaid tax

- (1) This section applies if—
 - (a) a company ("the migrating company") ceases to be resident in the United Kingdom at any time, and
 - (b) any tax which is payable by the company in respect of periods beginning before that time is not paid within 6 months from the time when it becomes payable.
- (2) The Commissioners for Her Majesty's Revenue and Customs may, at any time before the end of the period of 3 years beginning with the time when the amount of the tax is finally determined, serve on any person within subsection (3) a notice—
 - (a) stating particulars of the tax payable, the amount remaining unpaid and the date when it became payable, and
 - (b) requiring that person to pay that amount within 30 days of the service of the notice.
- (3) The persons within this subsection are—
 - (a) any company which is, or within the pre-migration year was, a member of the same group as the migrating company,
 - (b) any person who is, or within the pre-migration year was, a controlling director of the migrating company, and
 - (c) any person who is, or within the pre-migration year was, a controlling director of a company which has, or within the pre-migration year had, control over the migrating company.
- (4) Any amount which a person is required to pay by a notice under this section may be recovered from the person as if it were tax due and duly demanded from the person.
- (5) If a person ("P") pays any amount which a notice under this section requires P to pay, P may recover the amount from the migrating company.
- (6) A payment in pursuance of a notice under this section is not allowed as a deduction in calculating any income, profits or losses for any tax purposes.
- (7) In this section—
 - "controlling director", in relation to a company, means a director of the company who has control of the company,

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“group” has the meaning which would be given by section 170 of the 1992 Act if in that section for references to 75 per cent subsidiaries there were substituted references to 51 per cent subsidiaries, and

“pre-migration year” means the period of 12 months ending with the time when the migrating company ceases to be resident in the United Kingdom.

109F Interpretation of sections 109B to 109E

- (1) In sections 109B to 109E, any reference to the tax payable by a company includes a reference to—
 - (a) any amount which the company is liable to pay under section 77C (territorial extension of charge to tax),
 - (b) any amount of tax which the company is liable to pay under regulations made under section 684 of ITEPA 2003 (PAYE),
 - (c) any amount which the company is liable to pay under sections 61 and 62(1)(a) of the Finance Act 2004 (sub-contractors in the construction industry),
 - (d) any income tax which the company is liable to pay in respect of payments within section 946 of ITA 2007 (collection of tax: deposit-takers, building societies and certain companies), and
 - (e) any amount representing income tax which the company is liable to pay under section 966 of ITA 2007 (entertainers and sportsmen).
- (2) In sections 109B to 109E read in accordance with subsection (1), any reference to the tax payable by a company in respect of periods beginning before any particular time includes a reference to any interest—
 - (a) on the tax so payable, or
 - (b) on tax paid by the company in respect of such periods,
 which the company is liable to pay in respect of periods beginning before or after that time.
- (3) In sections 109B to 109E “director”, in relation to a company, is to be read in accordance with the following provisions—
 - (a) section 67(1) and (2) of ITEPA 2003, and
 - (b) section 452 of CTA 2010.
- (4) In sections 109B to 109E, any reference to a person having control of a company is to be read in accordance with sections 450 and 451 of CTA 2010.”

Finance Act 1988 (c. 39)

55 FA 1988 is amended as follows.

56 Omit sections 130 to 132 (company migration).