

FINANCE ACT 2015

EXPLANATORY NOTES

INTRODUCTION

Section 98 and Schedule 16: Payment of Tax

Summary

1. This section and Schedule govern the payment and recovery of tax payable under a charging notice. The Schedule sets out provisions for the recovery of diverted profits tax from the UK-representative of a non-UK resident company and from any company that is related to the non-resident company.

Details of the Section

2. Subsection (1) applies the section when a charging notice is issued.
3. Subsection (2) requires the payment of diverted profits tax within 30 days after the day the charging notice is issued.
4. Subsection (3) makes the company to which the notice is issued liable for payment of the tax (but see also Schedule 1).
5. Subsection (4) prevents postponement of payment of the tax on any grounds. The subsection makes clear that this means the tax is due and payable regardless of whether it is subject to review under section 101, or subject to an appeal in respect of the notice.
6. Subsection (5) introduces Schedule 16, which has two Parts.

Details of the Schedule

Part 1

7. Part 1 of the Schedule applies, with some modifications, the provisions of Chapter 6 of Part 22 of the Corporation Tax Act 2010 (collection, etc. of tax from UK representatives of non-UK resident companies) to the recovery of diverted profits tax.

Paragraph 1

8. This paragraph ensures that Chapter 6 of Part 22 of Corporation Tax Act 2010 has effect in relation to diverted profits tax and interest on diverted profits tax.
9. Subparagraph (2) introduces subparagraphs 3 to 5, which modify the application of Chapter 6 of Part 22 of Corporation Tax Act 2010 in relation to diverted profits tax.
10. Subparagraph (3) applies Chapter 6 of Part 22 “the avoided PE” (within the meaning of section 86), as it would apply to a permanent establishment in the United Kingdom through which the company carries on a trade.
11. Subparagraph (4) allows for references to “chargeable profits of the company attributable to that establishment”, within section 969(3) of the chapter, to be read as

*These notes refer to the Finance Act 2015 (c.11)
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references to “taxable diverted profits arising to the company...” for the purposes of the application of the chapter to diverted profits tax.

12. Subparagraph (5) provides that references to the giving or service of a notice in section 971 of the Corporation Tax Act 2010 include a reference to the giving of a notice.

Part 2

13. Part 2 of the Schedule enables unpaid diverted profits tax due from a non-UK resident company to be recovered from a related company.

Paragraph 2

14. Subparagraph (1) applies the Schedule where an amount of diverted profits tax has been charged on a non-UK resident company for an accounting period and the whole or any part of that amount is unpaid at the end of the due and payable date.
15. Subparagraph (2) defines “the taxpayer company” for the purposes of Part 2 of the Schedule as the non-UK resident company described in subparagraph (1).

Paragraph 3

16. This paragraph defines what is meant by “the relevant period” for the purposes of Part 2 of the Schedule.

Paragraph 4

17. This paragraph defines what is meant by a “related company” for the purposes of Part 2 of the Schedule.
18. Subparagraph (1) defines a “related company” by reference to group and consortium relationships.
19. Subparagraph (2) defines when two companies are members of the same group, for the purposes of subparagraph (1)(a).
20. Subparagraph (3) defines when two companies are members of the same group, for the purposes of subparagraph (1)(c).
21. Subparagraph (4) defines when a company is a member of a consortium or owned by a consortium for the purposes of Part 2 of the Schedule.
22. Subparagraph (5) provides that “51% subsidiary” in paragraph 4 has the same meaning as in section 1154 Corporation Tax Act 2010.

Paragraph 5

23. This paragraph governs the serving of notices on related companies for the recovery of diverted profits tax.
24. Subparagraph (1) allows a notice to be served on a related company, requiring the payment of diverted profits tax (or in a consortium case the proportion of that tax provided for by paragraph 7) within 30 days of the service of the notice.
25. Subparagraph (2) stipulates what information must be included in the notice.
26. Subparagraph (3) gives effect to the notice as if it were a charging notice and as if the amount recoverable under the notice were diverted profits tax charged on the company on which the notice is served.
27. Subparagraph (4) defines “consortium case” for the purposes of Part 2 of the Schedule.

Paragraph 6

28. This paragraph sets a time limit for the serving of a notice under Part 2 of the Schedule of three years beginning with the date when the charging notice or supplementary charging notice was issued.

Paragraph 7

29. This paragraph sets out rules for the calculation of the amount recoverable from a related company in a consortium case.
30. Subparagraph (1) establishes the amount that a related company may be required to pay by notice under Part 2 of the Schedule by reference to the group and consortium relationship categories in paragraph 4(1).
31. Subparagraph (2) provides that, for the purposes of paragraph 7, a member's share in a consortium is the lower of the percentages set out in subparagraph (3)(a)-(c).
32. Subparagraph (3) sets out the three percentage measures referred to in subparagraph (2).
33. Subparagraph (4) requires the calculation of an average percentage where the percentages set out above have fluctuated during the relevant period.
34. Subparagraph (5) applies Chapter 6 of Part 5 of the Corporation Tax Act 2010 for the purposes of subparagraph (3), as it applies for the purposes of sections 143(3)(b) and (c) and 144(3)(b) and (c) of the Corporation Tax Act 2010.

Paragraph 8

35. Subparagraph (1) allows a company that has paid an amount in pursuance of a notice under Part 2 of the Schedule to recover that amount from the taxpayer company.
36. Subparagraph (2) prevents a payment made in pursuance of a notice under Part 2 of the Schedule from being allowed as a deduction in calculating income, profits, or losses, for any tax purpose.

Background Note

37. The diverted profits tax is a new charge on diverted profits. The main objective is to counteract contrived arrangements used by large groups (typically multinational enterprises) that result in the erosion of the UK tax base.