
Changes to legislation: Finance Act 2015, PART 2 is up to date with all changes known to be in force on or before 02 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

SCHEDULES

SCHEDULE 16

RECOVERY OF UNPAID DIVERTED PROFITS TAX DUE FROM NON-UK RESIDENT COMPANY

PART 2

RECOVERY OF DIVERTED PROFITS TAX FROM RELATED COMPANIES

Cases in which this Part applies

- 2 (1) This Part of this Schedule applies if—
- (a) an amount of diverted profits tax has been charged on a company for an accounting period,
 - (b) the whole or any part of that amount is unpaid at the end of the due and payable date, and
 - (c) the company is non-UK resident.
- (2) In this Part of this Schedule “the taxpayer company” means the company mentioned in sub-paragraph (1).

Meaning of “the relevant period”

- 3 In this Part of this Schedule “the relevant period”, in relation to an amount of unpaid diverted profits 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.

Meaning of “related company”

- 4 (1) A company is a “related company”, for the purposes of this Part of this Schedule, 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 sub-paragraph (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.

Changes to legislation: Finance Act 2015, PART 2 is up to date with all changes known to be in force on or before 02 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (3) For the purposes of sub-paragraph (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 of CTA 2010 (group relief).
- (4) For the purposes of this Part of this Schedule—
- (a) a company is a member of a consortium if it is a member of a consortium within the meaning of Part 5 of CTA 2010, and
 - (b) a company is owned by a consortium if it is owned by a consortium within the meaning of that Part.
- (5) In this paragraph “51% subsidiary” has the meaning given by section 1154 of CTA 2010.

Notice requiring payment of unpaid tax

- 5 (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 paragraph 7.
- (2) The notice must state—
- (a) the amount of diverted profits tax charged 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 charging notice and that amount were an amount of diverted profits tax charged on that company.
- (4) In this Part of this Schedule “consortium case” means a case where the related company is not within paragraph 4(1)(a).

Time limit for giving notice

- 6 A notice under this Part of this Schedule must be served before the end of the period of 3 years beginning with the date when the charging notice or supplementary charging notice imposing the charge to tax was issued.

Amount payable in consortium case

- 7 (1) In a consortium case, the amount that the related company may be required to pay by notice under this Part of this Schedule is the proportion of the unpaid tax corresponding—
- (a) if the company is only within paragraph 4(1)(b), to the share which the company has had in the consortium for the relevant period,
 - (b) if the company is only within paragraph 4(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

Changes to legislation: Finance Act 2015, PART 2 is up to date with all changes known to be in force on or before 02 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (c) if the company is within paragraph 4(1)(b) and (c), to whichever is the greater of the amounts given by paragraph (a) and (b).
- (2) For the purposes of this paragraph, 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 sub-paragraph (3).
- (3) Those percentages are—
- (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 sub-paragraph (3) has fluctuated in the relevant period, the average percentage over the period is to be taken.
- (5) Chapter 6 of Part 5 of CTA 2010 (equity holders and profits or assets available for distribution) applies for the purposes of sub-paragraph (3) as it applies for the purposes of sections 143(3)(b) and (c) and 144(3)(b) and (c) of that Act.

Part 2: supplementary

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

Changes to legislation:

Finance Act 2015, PART 2 is up to date with all changes known to be in force on or before 02 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

[View outstanding changes](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 21 para. 2(e) and word inserted by [2021 c. 26 Sch. 27 para. 44\(3\)\(b\)](#)
- Sch. 21 para. 5(6) inserted by [2021 c. 26 Sch. 27 para. 44\(4\)\(b\)](#)