

CORPORATION TAX ACT 2010

EXPLANATORY NOTES

INTRODUCTION

Part 14: Change in company ownership

Chapter 6: Recovery of unpaid corporation tax

Overview

2193. This Chapter is based on sections 767A to 767B of ICTA.
2194. Sections 767A and 767B of ICTA were introduced by FA 1994 to counter the use of company purchase schemes to avoid the payment of corporation tax. In a typical case a profitable company is stripped of its trade or business, usually by way of transfer to another member of its group, leaving it only with sufficient cash to settle its outstanding corporation tax. The company is then sold – for a sum equivalent to a proportion of the tax outstanding – to a third party (often non-resident) who arranges for the company to participate in arrangements intended to eliminate the tax liability. On the assumption that the arrangements will be successful, the new owner then arranges for the cash to be withdrawn.
2195. If the avoidance arrangements are effective, the company has no corporation tax to pay. But if they are found to be ineffective, HMRC have little or no prospect of collecting the unpaid tax from the company, because the company is left with no funds. Sections 767A and 767B of ICTA enable HMRC to collect the unpaid corporation tax from a person linked with the company as mentioned in section 767A(2).
2196. Subsequently, alternative schemes were developed that attempted to find ways around sections 767A and 767B of ICTA. For example, as sections 767A and 767B of ICTA only applied to tax liabilities for accounting periods beginning before the change in ownership, the new schemes ensured that the tax liability crystallised in an accounting period beginning after that date. They did this by using provisions such as rollover relief that postponed the tax charge or other provisions that involved income or gains being taxed in periods other than that in which they accrued. Section 767AA of ICTA was introduced by FA 1998 to block such schemes. If it bites, HMRC can collect the unpaid corporation tax from a person linked with the company as mentioned in section 767AA(4).
2197. This Chapter has the following structure.
- Sections 706 to 709 define some key expressions for the purposes of the Chapter.
 - Sections 710 to 712 enable HMRC to recover unpaid corporation tax for an accounting period beginning before the change in ownership. They are based on sections 767A and 767B of ICTA.
 - Sections 713 to 715 enable HMRC to recover unpaid corporation tax for an accounting period ending on or after the change in ownership. They are based on section 767AA of ICTA.

- Sections 716 to 718 are miscellaneous provisions.

Section 706: Meaning of “linked” person

2198. This interpretative section explains when a person is “linked” to a company for the purposes of this Chapter. It is based on sections 767A and 767AA of ICTA.
2199. If the statutory conditions are met, such a person may be assessed and charged to an amount of unpaid corporation tax under section 710(2) or, as the case may be, section 713(2).

Section 707: Meaning of “control”

2200. This interpretative section is based on section 767B of ICTA.

Section 708: Rights to be attributed for the purposes of section 707

2201. This section supplements section 707. It is based on section 767B of ICTA.

Section 709: Meaning of “the relevant period”

2202. This interpretative section is based on sections 767A and 767AA of ICTA.
2203. *Subsection (3)* makes an exception to the general rule laid down by *subsection (2)*. Suppose A sells a company to B without intending to avoid tax and B enters into a company purchase scheme with C: B may be liable under this Chapter but A may not. The rationale is that A can be expected to ensure, when selling the company to B, that B does not behave in a way which would trigger this Chapter, but A cannot be expected to ensure that B does not enter into arrangements with C whereby C triggers this Chapter. *Subsection (3)* begins “But if ...” to make it clear that *subsection(2)* is subject to *subsection (3)*.

Section 710: Recovery of unpaid corporation tax for accounting period beginning before change

2204. This section enables an officer of Revenue and Customs to assess and charge a linked person to an amount of unpaid corporation tax for an accounting period beginning before the change in the ownership of a company. It is based on section 767A of ICTA.
2205. Section 767A(1) of ICTA gives this assessment function to “the Board”, ie to the Commissioners for HMRC. In practice, the Commissioners delegate this function to officers of Revenue and Customs, and *subsections (1)* and *(2)* reflect this. This is a minor change in the law. See *Change 5* in Annex1. In practice, the administration of sections 767A and 767AA of ICTA and the provisions which supplement them is restricted to a specialist group of officers. *Change 5* has no effect on this practice.
2206. Like the source legislation, *subsection (2)* provides that “[a person]... may be assessed ...”. This gives officers the power, but not the obligation, to assess linked persons, and therefore allows HMRC to exercise managerial discretion.

Section 711: Conditions relating to company’s trade or business

2207. This section lists three conditions which relate to the company’s trade or business; if none of these conditions is met, section 710 does not apply. This section is based on sections 767A and 767B of ICTA.
2208. The meaning of “connected” in *subsection (5)* is given by section 1176(1). Section 767B(9) of ICTA is therefore not rewritten as a separate proposition.

Section 712: Meaning of “a major change in the nature or conduct of a trade or business”

2209. This interpretative section is based on section 767B of ICTA.
2210. Section 767B(7) of ICTA refers to section 245 of that Act. In repealing section 245 of ICTA, FA 1998 inadvertently omitted to make the necessary consequential amendment to section 767B(7) of ICTA.
2211. As it stood before its repeal, section 245(4)(a) of ICTA read:
“In subsection (1) above “a major change in the nature or conduct of a trade or business” includes –
- (a) a major change in the type of property dealt in, or services or facilities provided, in the trade or business; or
 - (b) a major change in customers, outlets or markets of the trade or business; or
 - (c) a change whereby the company ceases to be a trading company and becomes an investment company or vice versa; or
 - (d) where the company is an investment company, a major change in the nature of the investments held by the company.
2212. Before its repeal, section 245(5) of ICTA defined “trading company” and “investment company” for the purposes of that section:
- ““trading company” means a company whose business consists wholly or mainly of the carrying on of a trade or trades and
- “investment company” means a company (other than a holding company) whose business consists wholly or mainly in the making of investments and the principal part of whose income is derived therefrom;
- “holding company” means a company whose business consists wholly or mainly in the holding of shares or securities of companies which are its 90 per cent subsidiaries and which are trading companies.
2213. Departmental practice in applying section 767B(7) of ICTA has not changed since 1998.
2214. If the repeal of section 245(4) of ICTA repealed section 767B(7) of that Act by implication, then it enabled the taxpayer to argue that a change which used to be mentioned in section 245(4) was not necessarily a major change in the nature or conduct of a trade or business.
2215. Section 245 of ICTA was one of a number of provisions repealed by Schedule 3 to FA 1998 as part of the abolition of advance corporation tax (ACT). It would be anomalous if, as part of the abolition of ACT, Parliament implicitly repealed section 767B(7) of ICTA and thereby weakened section 767A of that Act. It would be particularly anomalous if Parliament did this in FA 1998, since FA 1998 inserted section 767AA of ICTA to catch schemes which section 767A of that Act did not. In statutory interpretation, there is a presumption that Parliament wishes to avoid an anomalous result. Accordingly, the repeal of section 245 of ICTA did not by implication repeal section 767B(7) of that Act.
2216. Accordingly, this section draws on section 245 of ICTA (repealed) to rewrite section 767B(7) of ICTA.

Section 713: Recovery of unpaid corporation tax for accounting period ending on or after change

2217. This section enables an officer of Revenue and Customs to assess and charge a linked person to an amount of unpaid corporation tax for an accounting period ending on or after the change in the ownership of a company. It is based on section 767AA of ICTA.

*These notes refer to the Corporation Tax Act 2010
(c.4) which received Royal Assent on 3 March 2010*

2218. Section 767AA(1) of ICTA gives this assessment function to “the Board”, ie to the Commissioners for HMRC. In practice, the Commissioners delegate this function to officers of Revenue and Customs, and *subsections (1) and (2)* reflect this. This is a minor change in the law. See *Change 5* in Annex 1. In practice, the administration of sections 767A and 767AA of ICTA and the provisions which supplement them is restricted to a specialist group of officers. *Change 5* has no effect on this practice.
2219. Like the source legislation, subsection (2) provides that “[a person]... *may* be assessed ...”. This gives officers the power, but not the obligation, to assess linked persons, and therefore allows HMRC to exercise managerial discretion.
2220. For the sake of consistency, subsection (1)(b) has been brought into line with section 710(1)(b).

Section 714: The expectation condition

2221. This section spells out the expectation condition mentioned in section 713(1)(d). It is based on section 767AA of ICTA.
2222. *Subsection (2)* omits as otiose “either or both of” in section 767AA(2) of ICTA.
2223. In *subsection (4)(a)*, the words in brackets warn the reader that “an associated company” is not necessarily the “associated company” mentioned in section 713(1)(b). Which company in a group has a corporation tax liability may depend on (for example) how the group allocates its group relief.

Section 715: Meaning of “transaction entered into in connection with change in ownership”

2224. This interpretative section is based on section 767AA of ICTA.

Section 716: Interest

2225. This section imposes interest on tax which has been assessed under section 710 or section 713 and is overdue. It is based on section 767B of ICTA.

Section 717: Effect of payment in pursuance of assessment under section 710 or 713

2226. This section is about payments in pursuance of an assessment under section 710 or 713. It is based on section 767B of ICTA.
2227. *Subsection (1)* disallows such a payment. *Subsection (2)* gives the maker of such a payment a right of recovery.

Section 718: Meaning of “associated company”

2228. This interpretative section is based on section 767AA of ICTA.