



# Corporation Tax Act 2010

## 2010 CHAPTER 4

### PART 14

#### CHANGE IN COMPANY OWNERSHIP

### CHAPTER 6

#### RECOVERY OF UNPAID CORPORATION TAX

#### *General definitions*

#### **706 Meaning of “linked” person**

- (1) If there is a change in the ownership of a company, a person is “linked” to the company, for the purposes of this Chapter, if condition A or B is met.
- (2) Condition A is that the person had control of the company at any time in the relevant period before the change.
- (3) Condition B is that the person is a company of which a person mentioned in subsection (2) had control at any time in the period of 3 years before the change.
- (4) For the meaning of—
  - (a) “control”, see section 707, and
  - (b) “the relevant period”, see section 709.

#### **707 Meaning of “control”**

- (1) This section applies for the purposes of this Chapter.
- (2) A person (“P”) is treated as having control of a company (“C”) if P—
  - (a) exercises,
  - (b) is able to exercise, or

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- (c) is entitled to acquire,  
direct or indirect control over C's affairs.
- (3) In particular, P is treated as having control of C if P possesses or is entitled to acquire—
  - (a) 50% of the share capital or issued share capital of C,
  - (b) 50% of the voting power in C,
  - (c) so much of the issued share capital of C as would, on the assumption that the whole of the income of C were distributed among the participators, entitle P to receive the greater part of the amount so distributed, or
  - (d) such rights as would entitle P, in the event of the winding up of C or in any other circumstances, to receive the greater part of the assets of C which would then be available for distribution among the participators.
- (4) Any rights that P or any other person has as a loan creditor are to be disregarded for the purposes of the assumption in subsection (3)(c).
- (5) If two or more persons together satisfy any of the conditions in subsections (2) and (3) and do so because they acted together to put themselves in a position where they will in fact satisfy the condition, each of them is treated as having control of C.
- (6) In this section—
  - “loan creditor” has the meaning given by section 453, and
  - “participator” has the meaning given by section 454.
- (7) See also section 708 (rights to be attributed for the purposes of this section).

## **708 Rights to be attributed for the purposes of section 707**

- (1) This section applies for the purposes of section 707.
- (2) A person is treated as entitled to acquire anything which the person—
  - (a) is entitled to acquire at a future date, or
  - (b) will at a future date be entitled to acquire.
- (3) If a person—
  - (a) possesses any rights or powers on behalf of another person (A), or
  - (b) may be required to exercise any rights or powers on A's direction or behalf, those rights or powers are to be attributed to A.
- (4) There may also be attributed to a person all the rights and powers—
  - (a) of any company of which the person has, or the person and associates of the person have, control,
  - (b) of any two or more companies within paragraph (a),
  - (c) of any associate of the person, or
  - (d) of any two or more associates of the person.
- (5) The rights and power which may be attributed under subsection (4)—
  - (a) include those attributed to a company or associate under subsection (3) but
  - (b) do not include those attributed to an associate under subsection (4).
- (6) Such attributions are to be made under subsection (4) as will result in C being treated as under the control of 5 or fewer participators if it can be so treated.

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(7) In this section—

“associate” has the meaning given by section 448, and

“participator” has the meaning given by section 454.

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

(1) This section applies for the purposes of this Chapter.

(2) “The relevant period”, in relation to a change in the ownership of a company, means the period of 3 years before the change.

(3) But if in the period of 3 years before the change (“the later change”) there was another change in the ownership of the company (“the earlier change”), “the relevant period”, in relation to the later change, means the period between the earlier change and the later change.

#### *Recovery of unpaid corporation tax for accounting period beginning before change*

#### **710 Recovery of unpaid corporation tax for accounting period beginning before change**

(1) This section applies if an officer of Revenue and Customs considers that—

(a) there has been a change in the ownership of a company (“X”),

(b) any corporation tax assessed on X for an accounting period beginning before the change remains unpaid at any time more than 6 months after it was assessed, and

(c) any of conditions A to C in section 711 (conditions relating to company’s trade or business) is met.

(2) A person who is linked to X may be assessed by the officer and charged to an amount of corporation tax which does not exceed the amount remaining unpaid.

(3) A person assessed and charged under this section is to be assessed and charged in the name of X.

(4) An assessment under this section is not out of time if it is made within 3 years from the date of the final determination of the liability of X to corporation tax for the accounting period mentioned in subsection (1)(b).

#### **711 Conditions relating to company’s trade or business**

(1) The following are the conditions mentioned in section 710(1)(c).

(2) Condition A is that—

(a) in the period of 3 years before the change in the ownership of X, the activities of a trade or business of X cease or the scale of those activities becomes small or negligible, and

(b) there is no significant revival of those activities before the change occurs.

(3) Condition B is that after the change in the ownership of X, but under arrangements made before it, the activities of a trade or business of X cease or the scale of those activities becomes small or negligible.

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- (4) Condition C is that—
- (a) there is a major change in the nature or conduct of a trade or business of X in the relevant 6 year period,
  - (b) a relevant transfer of assets of X occurs—
    - (i) in the period of 3 years before the change in the ownership of X, or
    - (ii) after the change but under arrangements made before it, and
  - (c) the major change mentioned in paragraph (a) is attributable to that transfer.
- (5) In this section—
- “the relevant 6 year period” means the period of 6 years beginning 3 years before the change in the ownership of X,
- “relevant transfer”, in relation to assets of X, means a transfer of those assets—
- (a) to a person who had control of X at any time in the relevant period before the change in the ownership of X,
  - (b) to a person connected with a person mentioned in paragraph (a), or
  - (c) to a person under arrangements which enable any of those assets, or any assets representing those assets, to be transferred to a person mentioned in paragraph (a) or (b), and
- “transfer”, in relation to an asset, includes—
- (a) any disposal, letting or hiring of it,
  - (b) any grant or transfer of any right, interest or licence in or over it, and
  - (c) the giving of any business facilities with respect to it.
- (6) For the meaning of “a major change in the nature or conduct of a trade or business”, see section 712.

## **712 Meaning of “a major change in the nature or conduct of a trade or business”**

- (1) This section applies for the purposes of section 711(4).
- (2) “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,
  - (b) a major change in customers, outlets or markets of the trade or business,
  - (c) a change by which the company ceases to be a trading company and becomes an investment company,
  - (d) a change by which the company ceases to be an investment company and becomes a trading company, and
  - (e) if the company is an investment company, a major change in the nature of the investments held by the company.
- (3) Any reference in subsection (2) to a change includes a change which is achieved gradually as a result of a series of transfers.
- (4) In this section “trading company” means a company whose business consists wholly or mainly in the carrying on of a trade or trades.
- (5) For the purposes of this section, a company is an investment company if—
- (a) its business consists wholly or mainly in the making of investments, and

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- (b) the principal part of its income is derived from investments.
- (6) But a company is not an investment company if its business consists wholly or mainly in the holding of shares or securities of companies—
  - (a) which are its 90% subsidiaries, and
  - (b) which are trading companies.

*Recovery of unpaid corporation tax for accounting period ending on or after change*

### **713 Recovery of unpaid corporation tax for accounting period ending on or after change**

- (1) This section applies if an officer of Revenue and Customs considers that—
  - (a) there has been a change in the ownership of a company (“Y”),
  - (b) any corporation tax has been assessed on Y or an associated company for an accounting period ending on or after the change,
  - (c) that tax remains unpaid at any time more than 6 months after it was assessed, and
  - (d) the condition in section 714 (the expectation condition) is met.
- (2) A person who is linked to Y may be assessed by the officer and charged to an amount of corporation tax which does not exceed the amount remaining unpaid.
- (3) A person assessed and charged under this section is to be assessed and charged in the name of the company (“T”) by which the tax remains unpaid.
- (4) An assessment under this section is not out of time if it is made within 3 years from the date of the final determination of the liability of T to corporation tax for the accounting period mentioned in subsection (1)(b).
- (5) For the meaning of “associated company”, see section 718.

### **714 The expectation condition**

- (1) The condition mentioned in section 713(1)(d) is that it would be reasonable (apart from section 713) to make the inference specified in subsection (3) from any of the matters specified in subsection (2).
- (2) Those matters are—
  - (a) the terms of any transactions entered into in connection with the change in the ownership of Y, and
  - (b) the other circumstances of the change and of any such transactions.
- (3) The inference is that at least one of the transactions mentioned in subsection (2) was entered into by one or more of its parties on the assumption that, if a potential tax liability were to arise, it would be unlikely to be met or to be met in full.
- (4) A “potential tax liability” is a liability to pay corporation tax which would or might arise—
  - (a) from an assessment, made after the change in ownership, on Y or an associated company (whether or not a particular associated company), and
  - (b) in foreseeable circumstances.

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- (5) Circumstances are “foreseeable circumstances” if—
  - (a) the circumstances were reasonably foreseeable at the time of the change in ownership, or
  - (b) there was a reasonably foreseeable risk at that time that the circumstances might occur.
- (6) For the meaning of “transaction entered into in connection with change in ownership”, see section 715.

### **715 Meaning of “transaction entered into in connection with change in ownership”**

- (1) This section has effect for the purposes of section 714.
- (2) A transaction is entered into in connection with a change in the ownership of Y if—
  - (a) it is the transaction, or one of the transactions, by which the change is effected, or
  - (b) it is entered into as part of a series of transactions, or scheme, of which transactions effecting the change have formed or will form part.
- (3) Any reference in this section to a scheme is to a scheme, arrangements or understanding of any kind.
- (4) It does not matter for the purposes of subsection (3)—
  - (a) whether the scheme, arrangements or understanding is legally enforceable, or
  - (b) how many transactions are involved.
- (5) It does not matter, for the purpose of determining whether any transactions have formed or will form part of a series of transactions or scheme, that the parties to each of the transactions are not the same.
- (6) The cases in which any two or more transactions are to be taken as forming part of a series of transactions or scheme include a case in which it would be reasonable to assume that one or more of them—
  - (a) would not have been entered into independently of the other or others, or
  - (b) if entered into independently of the other or others, would not have taken the same form or been on the same terms.

### *Miscellaneous*

### **716 Interest**

- (1) Section 87A of TMA 1970 (interest on overdue corporation tax etc) has effect in relation to corporation tax assessed under section 710 or 713 (recovery of unpaid corporation tax) with the following modification.
- (2) That modification is that any reference to the date when the tax becomes due and payable is to be read as a reference to the date when the tax became due and payable—
  - (a) in the case of an assessment under section 710 (recovery of tax for accounting period beginning before change), by X,
  - (b) in the case of an assessment under section 713 (recovery of tax for accounting period ending on or after change), by Y or the associated company, depending on which is the company whose unpaid tax gave rise to the assessment.

## **717 Effect of payment in pursuance of assessment under section 710 or 713**

- (1) A payment—
  - (a) in pursuance of an assessment under section 710 or 713 (recovery of unpaid corporation tax), or
  - (b) of interest under section 87A of TMA 1970 (as that section has effect in accordance with section 716),is not allowed as a deduction in calculating income, profits or losses for any tax purposes.
- (2) A person who makes such a payment may recover an amount equal to the payment—
  - (a) in the case of an assessment under section 710 (recovery of tax for accounting period beginning before change), from X, or
  - (b) in the case of an assessment under section 713 (recovery of tax for accounting period ending on or after change), from Y or the associated company, depending on which is the company whose unpaid tax gave rise to the assessment.

## **718 Meaning of “associated company”**

- (1) This section has effect for the purposes of sections 713 and 714.
- (2) “Associated company”, in relation to Y and an assessment to tax, means a company (whenever formed) which, at the time of the assessment or at an earlier time after the change in the ownership of Y—
  - (a) has control of Y,
  - (b) is a company of which Y has control, or
  - (c) is a company under the control of the same person or persons as Y.