
STATUTORY INSTRUMENTS

1998 No. 3175

The Corporation Tax (Instalment Payments) Regulations 1998

Anti-avoidance provision

14.—(1) This regulation applies where, on or after 25th November 1997 and before 30th June 2002—

- (a) a company does one or both of the following, that is to say—
 - (i) otherwise than in any of the circumstances specified in paragraph (6), causes the date or dates on which any of its relevant accounting periods begins or ends to be changed,
 - (ii) otherwise than in either of the circumstances specified in paragraph (7), enters into any arrangements or transactions the effect of which is to transfer the amount of its taxable profits to another company which belongs to the same group, other than a company specified in paragraph (8), and
- (b) the result is that, on the assumptions specified in paragraph (9), an amount or amounts of corporation tax in respect of the taxable profits of the company for any part of an accounting period beginning after 1st July 1998 and ending on or before 30th June 2002 becomes, or is treated as becoming, due and payable, in accordance with regulations 4 and 5 or section 59D(1) of the Management Act, on a date or dates (“the actual date or dates”) later than the date or dates (“the hypothetical date or dates”) on which, but for the action taken by the company as mentioned in sub-paragraph (a), they would have become, or would be treated as having become, due and payable in accordance with those regulations or that section.

(2) The company shall be liable to pay to the Board, in respect of the accounting period referred to in paragraph (1)(b), an amount computed in accordance with paragraph (3).

(3) The amount payable shall be computed—

- (a) by reference to—
 - (i) the amount, or (as the case may be) the aggregate of the amounts, of corporation tax referred to in paragraph (1)(b), and
 - (ii) the interval of time elapsing between the hypothetical date or dates and the actual date or dates;
- (b) so as to allow for accelerated as well as deferred amounts of corporation tax (but not to the extent that it results in an amount falling to be paid by the Board); and
- (c) as if it were interest on the amount, or the aggregate of the amounts, of corporation tax referred to in paragraph (1)(b).

(4) Interest referred to in paragraph (3)(c)—

- (a) shall be at the rate applicable under section 178 of the Finance Act 1989, and
- (b) shall be treated as if it were tax charged and due and payable under an assessment.

(5) For the purposes of this regulation a relevant accounting period is an accounting period which, but for the action taken by the company as mentioned in paragraph (1)(a)(i)—

- (a) would have ended on 25th November 1997 or after that date but on or before 30th June 2002, and
 - (b) would have been of twelve months duration and commenced immediately following the end of the previous accounting period.
- (6) The circumstances specified in this paragraph for the purposes of paragraph (1)(a)(i) are where the change in question—
- (a) derives from a decision made before, or facts in existence prior to, 25th November 1997; or
 - (b) arises as a result of the accounting period concerned ending by reason of—
 - (i) the occurrence of any of the events specified in paragraphs (c) to (e) of subsection (3) of section 12 of the Taxes Act, except where the event in question occurs by reason of the transfer of the company's activities to a company which belongs to the same group, or
 - (ii) the transfer of the whole or part of the long term business of an insurance company to another company as mentioned in subsection (7A) of that section; or
 - (c) arises as a result of—
 - (i) a change in the ultimate control of the company giving rise to the alignment of the company's accounting period with that of its new ultimate parent company, where the alignment is effected prior to the end of the accounting period of the new ultimate parent company in which the change occurs, or
 - (ii) a notice by the company under section 224(2) of the Companies Act 1985(1) (specification of accounting reference date not later than nine months after the date of incorporation) giving rise to such alignment as is mentioned in paragraph (i).
- (7) The circumstances specified in this paragraph for the purposes of paragraph (1)(a)(ii) are where—
- (a) the accounting period of the company to whom the profits are transferred begins and ends on the same dates as the accounting period of the transferor company and the case is not one where the transferor company has effected a change falling within paragraph (1)(a)(i) in the date or dates of any of its relevant accounting periods;
 - (b) as a result of the transfer of profits, the profits of the transferor company for the accounting period in which the transfer is effected or for any subsequent accounting period are reduced by an amount not exceeding £5,000,000 or, where that accounting period is a period of less than twelve months, that amount proportionately reduced.
- (8) The company specified in this paragraph for the purposes of paragraph (1)(a)(ii) is any company which—
- (a) is resident outside the United Kingdom, and
 - (b) either—
 - (i) is not trading in the United Kingdom through a branch or agency, or
 - (ii) if so trading, is not a company in the case of which the taxable profits transferred form part of the taxable profits of that branch or agency.
- (9) The assumptions specified in this paragraph for the purposes of paragraph (1) are that, if the company had not taken the action referred to in sub-paragraph (a) of that paragraph—
- (a) reliefs available to the company or to the group to which the company belongs in calculating liability to corporation tax would have been allocated so as to result in that liability arising later rather than sooner,

(1) 1985 c. 6. Section 224 was inserted by section 3 of the Companies Act 1989 (c. 40).

- (b) any profits covered or, as the case may be, not covered by reliefs would similarly have been covered or not covered, and
 - (c) in calculating the amount or amounts of corporation tax which would have become due and payable, or would be treated as having become due and payable on the hypothetical date or dates, not more than twelve months' taxable profits would have been allocated to any of the years falling within regulation 4, that is, the year from 1st July 1999 to 30th June 2000, the year from 1st July 2000 to 30th June 2001, and the year from 1st July 2001 to 30th June 2002, allocating taxable profits for actual accounting periods before taxable profits for relevant accounting periods.
- (10) In calculating, for the purposes of this regulation, the hypothetical date or dates, it shall be assumed that—
- (a) where necessary, taxable profits are apportioned between a company's accounting periods (including its relevant accounting periods) on a time basis or, where that basis would be unjust and unreasonable, on such basis as would be just and reasonable;
 - (b) those dates are determined as if the taxable profits concerned were the only taxable profits for an accounting period.
- (11) In this regulation—
- (a) “control” shall be construed in accordance with section 416 of the Taxes Act⁽²⁾;
 - (b) “group” means a company which has one or more 51 per cent. subsidiaries together with that or those subsidiaries;
 - (c) “hypothetical date or dates” shall be construed in accordance with paragraph (1)(b);
 - (d) the reference in paragraph (6)(c) to a change in the ultimate control of the company (“the relevant company”) is a reference to the situation arising where—
 - (i) the company which was previously not under the control of any other company in the group (“the ultimate parent company”), while retaining control of the relevant company, itself comes under the control of another company (“the new ultimate parent company”) otherwise than as a result of a reorganisation, or
 - (ii) the relevant company ceases to be controlled by the ultimate parent company and comes under the control of another company (“the new ultimate parent company”) which is not under the control of any other company in the group, or
 - (iii) otherwise than as a result of a reorganisation, the relevant company comes under the control of a company which is not itself under the control of any other company;and the reference in paragraph (6)(c) to “new ultimate parent company” shall be construed accordingly;
 - (e) references to “51 per cent. subsidiary” shall be construed in accordance with section 838(1)(a) of the Taxes Act.

(2) Section 416 was amended by Part V of Schedule 17 to the Finance Act 1989.