



Finance Act 1990

1990 CHAPTER 29

PART IV

MISCELLANEOUS AND GENERAL

Ports levy

115 Levy on privatisation of certain ports

- (1) A levy shall be chargeable on the disposal of securities of a company which is, or has control of, a successor company to a relevant port authority if the disposal is made by—
- (a) the relevant port authority,
 - (b) a company under the control of the relevant port authority, or
 - (c) a person constituted under a private Act, the Bill for which was promoted by the relevant port authority.
- (2) For the purposes of this section and sections 116 to 120 below—
- (a) “securities”, in relation to a company, includes shares, debentures, bonds and other securities of the company, whether or not constituting a charge on the assets of the company;
 - (b) “control” shall be construed in accordance with section 416 of the Taxes Act 1988;
 - (c) a company is a successor company to a relevant port authority if the whole or any part of the authority’s undertaking is transferred to it in accordance with the provisions of a private Act, the Bill for which was promoted by the authority;
 - (d) a relevant port authority is an authority which is a harbour authority within the meaning of the Harbours Act 1964 or the Harbours Act (Northern Ireland) 1970 but not a company having a share capital or a local authority (within the meaning of section 842A of the Taxes Act 1988); and
 - (e) “shares” include stock;

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and in sections 116 to 120 below “levy” means levy under subsection (1) above.

116 Amount of levy

- (1) Subject to subsection (2) below, levy shall be charged at the rate of 50 per cent. on the consideration given for the securities disposed of.
- (2) Where no consideration is given for the securities disposed of, or their market value at the time of the disposal is greater than the consideration given, levy shall be charged at the rate of 50 per cent. on that market value.
- (3) There shall be allowed as a deduction from the amount on which levy would otherwise be chargeable any expenditure wholly and exclusively incurred for the purposes of the disposal by the person making the disposal, being—
 - (a) fees, commissions or remuneration paid for professional services,
 - (b) costs of transfer,
 - (c) costs of advertising, or
 - (d) expenses reasonably incurred in ascertaining the market value of the securities disposed of.
- (4) Where—
 - (a) a scheme has been effected or arrangements have been made (whether before or after a disposal) whereby the value of securities disposed of has been materially reduced, and
 - (b) the aim or one of the aims of the scheme or arrangements is decreasing liability to levy,the amount on which levy would be chargeable apart from this subsection shall be increased by such amount as appears to the Secretary of State to be appropriate.
- (5) The market value of securities shall be determined for the purposes of this section as it would fall to be determined in accordance with sections 150(1) to (3) and 152 of the Capital Gains Tax Act 1979 for the purposes of tax on chargeable gains (but subject to section 117 below).
- (6) The Treasury may substitute for the percentage for the time being specified in subsections (1) and (2) above such other percentage as they may prescribe by order made by statutory instrument.
- (7) An order under subsection (6) above shall not be made unless a draft of the order has been laid before and approved by a resolution of the House of Commons.

117 Levy on employee securities

- (1) This section applies where securities of a company are disposed of for no consideration, or for a consideration less than their market value, to—
 - (a) directors or employees of the company or of another company which is a wholly-owned subsidiary of the company,
 - (b) the trustees of a share option scheme or profit sharing scheme approved under Schedule 9 to the Taxes Act 1988, or
 - (c) the trustees of trusts to which section 86 of the Inheritance Tax Act 1984 applies and which do not permit any of the settled property to be applied otherwise than for the benefit of—

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- (i) persons of a class defined by reference to employment by, or the holding of office with, the company or another company which is a wholly-owned subsidiary of the company, or
 - (ii) persons of a class defined by reference to marriage or relationship to, or dependence on, persons of that class;and in this subsection “wholly-owned subsidiary” shall be construed in accordance with section 736 of the Companies Act 1985.
- (2) Where this section applies, the market value of the securities shall for the purposes of section 116 above be taken to be reduced—
 - (a) if no consideration is given for the securities, to nil, or
 - (b) otherwise, to the amount of the consideration given for the securities, or as nearly to nil, or that amount, as is permitted under subsection (3) below.
- (3) A reduction under subsection (2) above shall not exceed the difference between—
 - (a) three per cent. of the aggregate of the amounts on which levy is chargeable (ignoring any reduction under subsection (2) above) in the case of the disposal in question and any other disposals of securities of the company made on or before the day of that disposal, and
 - (b) the amount of any reductions under subsection (2) above in the case of the other disposals.

118 Payment of levy

- (1) Levy chargeable on a disposal shall be paid to the Secretary of State by the person by whom the disposal was made.
- (2) The amount of the levy shall be assessed by the Secretary of State who shall serve a notice of assessment on the person by whom the disposal was made stating the date of issue of the notice of assessment and the effect of subsection (3) below.
- (3) The amount assessed shall be payable within the period of three months beginning with the day on which the disposal was made or within the period of 30 days beginning with the date of the issue of the notice of assessment, if that period ends later.
- (4) Where any levy payable by the person by whom the disposal was made is not paid within the period of six months beginning with the first day after the period within which it is payable, the Secretary of State may, within the period of three years beginning with that day, serve on the company whose securities were disposed of a notice stating—
 - (a) particulars of the levy assessed and the amount remaining unpaid,
 - (b) the date of issue of the notice, and
 - (c) the effect of subsection (5) below.
- (5) The amount unpaid shall be payable to the Secretary of State by the company within the period of 30 days beginning with the date of issue of the notice under subsection (4) above.
- (6) Any amount paid in accordance with subsection (5) above shall cease to be payable to the Secretary of State by the person who made the disposal but the company may recover it from that person.

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- (7) A person who is liable to make a payment of levy but does not make payment of the amount due during the period within which it is payable shall also pay to the Secretary of State interest on the unpaid levy at the rate applicable under section 178 of the Finance Act 1989 from the first day after the end of that period until payment of the levy is made; and the interest shall be paid without deduction of tax.
- (8) In subsection (2) of that section, after paragraph (m) there shall be inserted “and
(n) section 118(7) of the Finance Act 1990.”

119. Information for purposes of levy

- (1) A person who makes a disposal of securities on which levy is chargeable shall give to the Secretary of State, not later than 30 days after the day on which the disposal is made, written notification that he has made the disposal.
- (2) The Secretary of State may by notice in writing require—
- (a) a person who is or may be liable to levy,
 - (b) a person to whom there has been made a disposal of securities on which levy is chargeable, or
 - (c) a company whose securities have been the subject of such a disposal,
- to deliver to him documents, or to furnish to him particulars, to which subsection (3) below applies within such time, not less than 30 days after the date of the notice, as may be specified in the notice.
- (3) This subsection applies to—
- (a) documents specified or described in the notice under subsection (2) above which are in the possession or power of the person to whom the notice is given and which (in the opinion of the Secretary of State) contain, or may contain, information relevant to a liability to levy or to the amount of such a liability, and
 - (b) particulars specified or described in the notice which the Secretary of State may reasonably require as being relevant to, or to the amount of, such a liability.
- (4) Where any person fails to give notification in accordance with subsection (1) above or to comply with a notice under subsection (2) above, he shall be liable—
- (a) to a penalty not exceeding £300, and
 - (b) if the failure continues after a penalty is imposed under paragraph (a) above, to a further penalty or penalties not exceeding £60 for each day on which the failure continues after the day on which the penalty under paragraph (a) above was imposed (but excluding any day for which a penalty under this paragraph has already been imposed).
- (5) Where a person fraudulently or negligently furnishes any incorrect particulars in response to a notice under subsection (2) above he shall be liable to a penalty not exceeding £3,000.
- (6) Proceedings for a penalty under this section shall be instituted by the Secretary of State before the High Court or, in Scotland, before the Court of Session, the Court of Exchequer in Scotland, and any penalty imposed by the court shall be paid to the Secretary of State.

- (7) Proceedings within subsection (6) above may not be instituted later than six years after the date on which the penalty was incurred or began to be incurred.
- (8) Any proceedings within subsection (6) above instituted in England and Wales shall be deemed to be civil proceedings by the Crown within the meaning of Part II of the Crown Proceedings Act 1947 and any such proceedings instituted in Northern Ireland shall be deemed to be civil proceedings within the meaning of that Part of that Act as for the time being in force in Northern Ireland.

120 Supplementary provisions relating to levy.

- (1) The time when a disposal of securities is made shall be determined for the purposes of sections 115 to 119 above as it would fall to be determined in accordance with section 27 of the Capital Gains Tax Act 1979 for the purposes of tax on chargeable gains.
- (2) A payment of levy by the person by whom a disposal is made shall be allowable as a deduction from the consideration in the computation under that Act of the gain accruing to the person on the disposal; but, subject to that, no payment of levy, interest on unpaid levy or penalty under section 119 above shall be allowed as a deduction in computing any income, profits or losses for any tax purposes.
- (3) There shall be paid into the Consolidated Fund—
 - (a) all payments of levy received by the Secretary of State,
 - (b) all interest paid to the Secretary of State on unpaid levy, and
 - (c) all penalties paid to the Secretary of State under section 119 above.
- (4) Any expenses of the Secretary of State incurred in consequence of any of sections 115 to 119 above or of this section shall be defrayed out of money provided by Parliament.