

SCHEDULES

SCHEDULE 25

Section 139.

SELF-ASSESSMENT: SURRENDERS OF ADVANCE CORPORATION TAX

Amendments of section 240 of the Taxes Act 1988

- 1 (1) Section 240 of the Taxes Act 1988 (set-off of company's advance corporation tax against subsidiary's liability to corporation tax) shall be amended as follows.
- (2) For subsection (1) there shall be substituted the following subsections—
- “ (1) Where a company (“the surrendering company”) has paid an amount of advance corporation tax in respect of a dividend or dividends paid by it in an accounting period, it may under this section surrender the benefit of so much of that amount as is available for surrender, or any part of that amount that is available for surrender, to any company which was a subsidiary of it throughout that accounting period.
- (1A) The surrender shall take effect on the surrendering company making a claim in accordance with Schedule 13A.
- (1B) A claim to surrender an amount exceeding the amount the benefit of which, at the time the claim is made, is available for surrender shall be of no effect.”
- (3) For subsections (6) and (7) there shall be substituted the following subsections—
- “(5A) A claim under subsection (1A) above may be withdrawn by the surrendering company with the consent of the subsidiary to whom the surrender was made.
- (5B) The withdrawal of a claim under subsection (1A) above to make a surrender for an accounting period of the surrendering company shall not prevent the making of a further claim under that subsection for that accounting period (whether to the same or a different subsidiary).
- (5C) Where the surrendering company withdraws a claim by virtue of which an amount of advance corporation tax was treated under subsection (2) above as paid by its subsidiary in respect of a distribution made on a date determined under that subsection—
- (a) the subsidiary shall be treated as if it had not paid that amount in respect of a distribution made by it on the date so determined; and
- (b) subject to the effect of any further claim, the surrendering company shall be treated as having paid a corresponding amount of advance corporation tax in respect of a distribution made by it on the date so determined.
- (5D) The amount of advance corporation tax the benefit of which is at any time available for surrender is the amount referred to in subsection (1) above less any amount which at that time falls within subsection (5E) below.

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(5E) The amounts are—

- (a) any amount which has been repaid to the surrendering company;
- (b) any amount which has been dealt with under section 239(3);
- (c) any amount surrendered under a claim for that period which has not been withdrawn.

(5F) Subject to subsection (5C)(b) above, no amount of advance corporation tax the benefit of which has been surrendered under this section shall be treated for the purposes of section 239 as advance corporation tax paid by the surrendering company.”

(4) After subsection (13) there shall be inserted the following subsection—

“(14) Schedule 13A (which makes supplementary provision with respect to surrenders of advance corporation tax) shall have effect.”

The new Schedule 13A to the Taxes Act 1988

2 After Schedule 13 to the Taxes Act 1988 there shall be inserted the following Schedule—

“SCHEDULE
13A

SURRENDERS OF ADVANCE CORPORATION TAX

General

- 1 (1) In this Schedule any reference to a claim is to a claim under section 240(1A).
- (2) In this Schedule “the relevant accounting period of the surrendering company” means, in relation to a claim by the surrendering company, the accounting period referred to in section 240(1).

Multiple claims

- 2 (1) Surrenders to different subsidiaries or to the same subsidiary at different times shall be treated as made by separate claims (however the claims are presented).
- (2) Where a surrendering company makes more than one claim at the same time, the claims shall be treated as made in such sequence as the surrendering company at that time elects or as, in default of such an election, an officer of the Board determines.

Content of claims etc.

- 3 (1) A claim must specify—
 - (a) the amount the benefit of which is surrendered; and
 - (b) the subsidiary to whom the surrender is made.

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- (2) The amount specified in compliance with sub-paragraph (1)(a) above must be an amount which is quantified at the time when the claim is made.

Time limit for claims

- 4 A claim by the surrendering company must be made within the period of six years from the end of the relevant accounting period of the surrendering company.

Claim to be included in return where possible

- 5 (1) Where a claim could be made by being included in a return under section 11 of the Management Act, or an amendment of such a return, it must be so made.
- (2) Section 42 of and Schedule 1A to the Management Act (procedure for making claims) shall not apply to the making of claims.
- 6 (1) A claim not included in a return or an amendment of a return must be made to an officer of the Board and must be supported by such documents as the officer may require.
- (2) The claim shall be made in such form as the Board may determine.
- (3) The form of claim shall provide for a declaration to the effect that all the particulars given in the form are correctly stated to the best of the information and belief of the person making the claim.

Contents of notices of withdrawal, etc.

- 7 (1) A claim shall not be withdrawn except by a notice given to an officer of the Board in such form as the Board may determine.
- (2) A notice withdrawing a claim must specify—
- (a) the surrendering company which made the claim;
 - (b) the amount the benefit of which was surrendered under the claim;
 - (c) the subsidiary to whom the surrender was made; and
 - (d) the relevant accounting period of the surrendering company in relation to the claim.
- (3) A notice withdrawing a claim must be accompanied by a notice signifying the consent required by section 240(5A).
- (4) Where a claim included in a return is withdrawn and the withdrawal could be made by an amendment of the return, it must be so made.

Simultaneous claims and withdrawals of claims

- 8 Where—
- (a) a claim (“claim A”) is withdrawn, and
 - (b) at the time when claim A is withdrawn, another claim (“claim B”) is made,

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claim A shall be treated as being withdrawn before claim B is treated as made.

Time limit for withdrawing claims

- 9 (1) Subject to sub-paragraph (3) below, a claim shall not be withdrawn after the earlier of—
- (a) the end of the period of six years from the end of the relevant accounting period of the surrendering company; and
 - (b) the date on which an assessment for any relevant accounting period of the subsidiary in whose favour the claim was made becomes final.
- (2) In this paragraph “relevant accounting period of the subsidiary” means, in relation to a claim, any period in which a distribution is treated under section 240(2) as made by virtue of the claim.
- (3) In the circumstances given by sub-paragraph (4) below, a claim may be withdrawn at any time before the end of the period of six years from the end of the relevant accounting period of the surrendering company.
- (4) The circumstances are that—
- (a) the claim was made—
 - (i) after the date on which an assessment for a relevant accounting period of the subsidiary in whose favour the claim is made becomes final; and
 - (ii) after a further assessment has been made on the subsidiary for that period by an officer of the Board or the Board; and
 - (b) immediately before the claim is withdrawn, none of the advance corporation tax which, by virtue of the claim, is treated as paid by the subsidiary has been finally dealt with to the subsidiary’s advantage.
- (5) For the purposes of sub-paragraph (4) above, advance corporation tax is finally dealt with to the subsidiary’s advantage if—
- (a) it is set against any liability of the subsidiary under any assessment to corporation tax which has become final; or
 - (b) any of it is repaid to the subsidiary.

No amendment of claims

- 10 Nothing in the Management Act shall be read as allowing a claim to be amended.

Further self-assessments by the surrendering company

- 11 (1) Where—
- (a) a claim is made after an assessment to corporation tax for the relevant accounting period of the surrendering company has become final,

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- (b) under section 239(1), advance corporation tax has been set against the company's liability to corporation tax for that period, and
 - (c) the claim is a claim to surrender the benefit of an amount which is or includes the whole or a part of the amount set-off,
- the claim must be accompanied by an assessment (a self-assessment) of the corporation tax due as a result of the claim.
- (2) The tax shall be treated as due and payable, in accordance with section 59D of the Management Act, on the day following the expiry of nine months from the end of the relevant accounting period.
 - (3) The standard provisions about enquiries into self-assessments (given by paragraph 14 below) apply to self-assessments provided under this paragraph.
- 12 (1) Where—
- (a) by virtue of section 239(4), advance corporation tax paid in the relevant accounting period of the surrendering company has been set against the company's liability to corporation tax for a later accounting period,
 - (b) the claim is made after assessments to corporation tax for both periods have become final, and
 - (c) the claim is a claim to surrender the benefit of an amount which is or includes the whole or a part of the amount set-off,
- the claim must be accompanied by an assessment (a self-assessment) of the corporation tax due as a result of the claim.
- (2) The tax shall be treated as due and payable, in accordance with section 59D of the Management Act, on the day following the expiry of nine months from the end of the later accounting period.
 - (3) The standard provisions about enquiries into self-assessments (given by paragraph 14 below) apply to self-assessments provided under this paragraph.
 - (4) For the purposes of sub-paragraph (1)(a) above, advance corporation tax which was in fact paid in the relevant accounting period of the surrendering company shall be treated as set against the liability of the company to corporation tax for the later accounting period after any other advance corporation tax available to be so treated.

Further self-assessments by subsidiary

- 13 (1) Sub-paragraph (3) below applies where—
- (a) under section 239(1), advance corporation tax has been set against the subsidiary's liability to corporation tax for an accounting period ("the relevant accounting period"),
 - (b) the advance corporation tax is, includes or is part of advance corporation tax which is treated as paid by the subsidiary in respect of that period on the assumption that section 240(2) required that treatment, and

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- (c) after an assessment to corporation tax for that period has become final, the subsidiary becomes aware of facts (“the true facts”) which, by virtue of section 240(1B), make that treatment incorrect.
- (2) Sub-paragraph (3) below also applies where—
- (a) by virtue of section 239(4), advance corporation tax has been set against the subsidiary’s liability to corporation tax for an accounting period (“the relevant accounting period”),
 - (b) the advance corporation tax is, includes or is part of advance corporation tax which is treated as paid by the subsidiary in respect of a previous accounting period on the assumption that section 240(2) required that treatment, and
 - (c) after an assessment to corporation tax for that period has become final, the subsidiary becomes aware of facts (“the true facts”) which, by virtue of section 240(1B), make that treatment incorrect.
- (3) The subsidiary must, before the end of the period of three months beginning with the day on which it becomes aware of the true facts, provide an officer of the Board with an assessment (a self-assessment) of the amount of corporation tax which was due for the relevant accounting period on the basis of the true facts.
- (4) The tax shall be treated as due and payable, in accordance with section 59D of the Management Act, on the day following the expiry of nine months from the end of the relevant accounting period of the subsidiary.
- (5) The standard provisions about enquiries into self-assessments (given by paragraph 14 below) apply to self-assessments provided under this paragraph.
- (6) For the purposes of this paragraph it shall be assumed that advance corporation tax actually paid (or correctly treated as paid) by the subsidiary has been set against the subsidiary’s liability to corporation tax before any advance corporation tax incorrectly treated as paid by the subsidiary.

Standard provisions about enquiries into self-assessments

- 14 (1) The standard provisions about enquiries into self-assessments (which correspond, in general terms, to certain provisions of section 28A of the Management Act) are as follows.
- (2) An officer of the Board may, at any time before the end of the period of one year beginning with the day on which the self-assessment is received, give notice of his intention to enquire into the self-assessment.
- (3) The officer’s enquiries shall end on such day as he by notice—
- (a) informs the company that he has completed his enquiries, and
 - (b) states his conclusions as to the amount of tax which should be contained in the company’s self-assessment.

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- (4) At any time in the period of 30 days beginning with the day on which the enquiries end, the company may amend its self-assessment so as to make good any deficiency or eliminate any excess in the amount of tax contained in the self-assessment.
- (5) At any time in the period of 30 days beginning immediately after the period mentioned in sub-paragraph (4) above, the officer may by notice to the company amend the company's self-assessment so as to make good any deficiency or eliminate any excess in the amount of tax contained in the self-assessment.
- (6) The provisions of the Management Act apply to an amendment of a self-assessment under sub-paragraph (5) above as they apply to an amendment of a self-assessment under section 28A(4) of that Act.
- (7) At any time before a notice is given under sub-paragraph (3) above, the company may apply for a direction that the officer shall give such a notice within such period as may be specified in the direction.
- (8) Subject to sub-paragraph (9) below, an application under sub-paragraph (7) above shall be heard and determined in the same way as an appeal against an amendment of a self-assessment under section 28A(2) or (4) of the Management Act.
- (9) The Commissioners hearing an application under sub-paragraph (7) above shall give the direction applied for unless they are satisfied that the officer has reasonable grounds for not giving the notice.

Repayments

- 15 (1) Where—
 - (a) a claim is withdrawn after an assessment for the relevant accounting period of the surrendering company has become final, and
 - (b) an amount of corporation tax paid by the surrendering company in respect of that period would not have been payable if the claim had not been made,the surrendering company shall be entitled by notice to claim repayment of that amount.
- (2) Where—
 - (a) a claim is made after the date on which an assessment for any relevant accounting period of the subsidiary in whose favour the claim is made becomes final, and
 - (b) an amount of corporation tax paid by the subsidiary in respect of that period would not have been payable if the claim had not been made,the subsidiary shall be entitled by notice to claim repayment of that amount.
- (3) In this paragraph “relevant accounting period of the subsidiary” has the same meaning as in paragraph 9.”

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- 3 Paragraphs 1 and 2 above have effect where the accounting period of the surrendering company ends on or after the day appointed under section 199 of the Finance Act 1994 for the purposes of Chapter III of Part IV of that Act (self-assessment).

Other amendments

- 4 Section 239(5) of the Taxes Act 1988 (manner in which claims under section 239(1) and (4) to be given effect) shall cease to have effect in relation to accounting periods ending on or after the day appointed as mentioned in paragraph 3 above.
- 5 In the Table in section 98 of the Taxes Management Act 1970 (penalties in respect of certain information provisions), after the entry in the second column relating to Schedule 13 to the Taxes Act 1988, there shall be inserted the following entry—
“Schedule 13A, paragraphs 11, 12 and 13;”.