



Finance Act 1988

1988 CHAPTER 39

PART III

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER V

MANAGEMENT

Company migration

130 Provisions for securing payment by company of outstanding tax

- (1) The requirements of subsections (2) and (3) below must be satisfied before a company ceases to be resident in the United Kingdom otherwise than in pursuance of a Treasury consent.
- (2) The requirements of this subsection are satisfied if the company gives to the Board—
 - (a) notice of its intention to cease to be resident in the United Kingdom, specifying the time (“the relevant time”) when it intends so to cease;
 - (b) a statement of the amount which, in its opinion, is the amount of the tax which is or will be payable by it in respect of periods beginning before that time; and
 - (c) particulars of the arrangements which it proposes to make for securing the payment of that tax.
- (3) The requirements of this subsection are satisfied if—
 - (a) arrangements are made by the company for securing the payment of the tax which is or will be payable by it in respect of periods beginning before the relevant time; and
 - (b) those arrangements as so made are approved by the Board for the purposes of this subsection.

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- (4) If any question arises as to the amount which should be regarded for the purposes of subsection (3) above as the amount of the tax which is or will be payable by the company in respect of periods beginning before the relevant time, that question shall be referred to the Special Commissioners, whose decision shall be final.
- (5) If any information furnished by the company for the purpose of securing the approval of the Board under subsection (3) above does not fully and accurately disclose all facts and considerations material for the decision of the Board under that subsection, any resulting approval of the Board shall be void.
- (6) In this section “Treasury consent” means a consent under section 765 of the Taxes Act 1988 (restrictions on the migration etc. of companies) given for the purposes of subsection (1)(a) of that section.
- (7) In this section and sections 131 and 132 below any reference to the tax payable by a company includes a reference to—
- (a) any amount of tax which it is liable to pay under regulations made under section 203 of the Taxes Act 1988 (PAYE);
 - (b) any income tax which it is liable to pay in respect of payments to which section 350(4)(a) of that Act (company payments which are not distributions) applies;
 - (c) any amount representing income tax which it is liable to pay under—
 - (i) regulations made under section 476(1) of that Act (building societies);
 - (ii) section 479 of that Act (interest paid on deposits with banks etc.); or
 - (iii) section 555 of that Act (entertainers and sportsmen);
 - (d) any amount which it is liable to pay under section 559(4) of that Act (sub-contractors in the construction industry); and
 - (e) any amount which it is liable to pay under paragraph 4 of Schedule 15 to Finance Act 1973 (territorial extension of charge of tax).
- (8) In this section and section 132 below any reference to the tax payable by a company in respect of periods beginning before any particular time includes a reference to any interest on the tax so payable, or on tax paid by it in respect of such periods, which it is liable to pay in respect of periods beginning before or after that time.
- (9) In this section and sections 131 and 132 below any reference to a provision of the Taxes Act 1988 shall be construed, in relation to any time before 6th April 1988, as a reference to the corresponding enactment repealed by that Act.
- (10) This section and sections 131 and 132 below shall be deemed to have come into force on 15th March 1988.

131 Penalties for failure to comply with section 130

- (1) If a company fails to comply with section 130 above at any time, it shall be liable to a penalty not exceeding the amount of tax which is or will be payable by it in respect of periods beginning before that time and which has not been paid at that time.
- (2) If, in relation to a company (“the migrating company”), any person does or is party to the doing of any act which to his knowledge amounts to or results in, or forms part of a series of acts which together amount to or result in, or will amount to or result in, the migrating company failing to comply with section 130 above at any time and either—
- (a) that person is a person to whom subsection (3) below applies; or

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- (b) the act in question is a direction or instruction given (otherwise than by way of advice given by a person acting in a professional capacity) to persons to whom that subsection applies,
that person shall be liable to a penalty not exceeding the amount of tax which is or will be payable by the migrating company in respect of periods beginning before that time and which has not been paid at that time.
- (3) This subsection applies to the following persons, namely—
- (a) any company which has control of the migrating company; and
 - (b) any person who is a director of the migrating company or of a company which has control of the migrating company.
- (4) In any proceedings against any person to whom subsection (3) above applies for the recovery of a penalty under subsection (2) above—
- (a) it shall be presumed that he was party to every act of the migrating company unless he proves that it was done without his consent or connivance; and
 - (b) it shall, unless the contrary is proved, be presumed that any act which in fact amounted to or resulted in, or formed part of a series of acts which together amounted to or resulted in, or would amount to or result in, the migrating company failing to comply with section 130 above was to his knowledge such an act.
- (5) References in this section to a company failing to comply with section 130 above are references to the requirements of subsections (2) and (3) of that section not being satisfied before the company ceases to be resident in the United Kingdom otherwise than in pursuance of a Treasury consent; and in this subsection “Treasury consent” has the same meaning as in that section.
- (6) In this section and section 132 below “director”, in relation to a company—
- (a) has the meaning given by subsection (8) of section 168 of the Taxes Act 1988 (read with subsection (9) of that section); and
 - (b) includes any person falling within subsection (5) of section 417 of that Act (read with subsection (6) of that section);
- and any reference to a person having control of a company shall be construed in accordance with section 416 of that Act.

132 Liability of other persons for unpaid tax

- (1) This section applies where—
- (a) a company (“the migrating company”) ceases to be resident in the United Kingdom at any time; and
 - (b) any tax which is payable by the migrating company in respect of periods beginning before that time is not paid within six months from the time when it becomes payable.
- (2) The Board may, at any time before the end of the period of three years beginning with the time when the amount of the tax is finally determined, serve on any person to whom subsection (3) below applies a notice—
- (a) stating particulars of the tax payable, the amount remaining unpaid and the date when it became payable; and
 - (b) requiring that person to pay that amount within thirty days of the service of the notice.

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- (3) This subsection applies to the following persons, namely—
- (a) any company which is, or within the relevant period was, a member of the same group as the migrating company; and
 - (b) any person who is, or within the relevant period was, a controlling director of the migrating company or of a company which has, or within that period had, control over the migrating company.
- (4) Any amount which a person is required to pay by a notice under this section may be recovered from him as if it were tax due and duly demanded of him; and he may recover any such amount paid by him from the migrating company.
- (5) A payment in pursuance of a notice under this section shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes.
- (6) In this section—
- “controlling director”, in relation to a company, means a director of the company who has control of it;
 - “group” has the meaning which would be given by section 272 of the Taxes Act 1970 if in that section references to residence in the United Kingdom were omitted and for references to 75 per cent. subsidiaries there were substituted references to 51 per cent. subsidiaries;
 - “the relevant period” means—
 - (a) where the time when the migrating company ceases to be resident in the United Kingdom is less than twelve months after 15th March 1988, the period beginning with that date and ending with that time;
 - (b) in any other case, the period of twelve months ending with that time.