



# Finance Act 1988

## 1988 CHAPTER 39

### PART III

#### INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

### CHAPTER V

#### MANAGEMENT

#### *Company migration*

#### **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
  - (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

---

*Status: This is the original version (as it was originally enacted).*

---

- (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.