



# Finance (No. 2) Act 1997

## 1997 CHAPTER 58

### PART I

#### THE WINDFALL TAX

#### **1 Charge to windfall tax**

- (1) Every company which, on 2nd July 1997, was benefitting from a windfall from the flotation of an undertaking whose privatisation involved the imposition of economic regulation shall be charged with a tax (to be known as the “windfall tax”) on the amount of that windfall.
- (2) Windfall tax shall be charged at the rate of 23 per cent.
- (3) Schedule 1 to this Act (which sets out how to quantify the windfall from which a company was benefitting on 2nd July 1997) shall have effect.

#### **2 The companies benefitting from windfalls**

- (1) For the purposes of this Part a company in existence on 2nd July 1997 was benefitting on that date from a windfall from the flotation of an undertaking whose privatisation involved the imposition of economic regulation if—
  - (a) that company, or a company of which it was on that date a demerged successor, had before that date been privatised by means of a flotation;
  - (b) there had, before that flotation, been a statutory transfer of property, rights and liabilities from a public corporation to the floated company or to a company which, at the time of the flotation, was a subsidiary undertaking of the floated company; and
  - (c) at the time of the flotation, the floated company was carrying on an undertaking whose privatisation involved the imposition of economic regulation.
- (2) For the purposes of this Part a company was privatised by means of a flotation if—

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- (a) an offer of shares in that company was at any time made to the public in the United Kingdom;
  - (b) the shares which were the subject-matter of the offer were publicly-owned at the time of the offer;
  - (c) the offer was or included an offer of shares for disposal at a fixed price; and
  - (d) shares in that company were first admitted to listing on the Official List of the Stock Exchange in pursuance of an application made in connection with the offer.
- (3) In this Part references, in relation to a company privatised by means of a flotation, to the time of the company's flotation are references to the time when shares in the floated company were first admitted to listing on the Official List of the Stock Exchange.
- (4) For the purposes of this Part a company in existence on 2nd July 1997 ("the relevant company") was on that date a demerged successor of a company privatised by means of a flotation if—
- (a) after the flotation of the floated company but before 2nd July 1997, there had been a statutory transfer of property, rights and liabilities from the floated company to a company ("the transferee company") which was a subsidiary undertaking of the floated company at the time of the transfer;
  - (b) the transferee company was not a subsidiary undertaking of the floated company on 2nd July 1997 but was, on that date, a subsidiary undertaking of the relevant company; and
  - (c) before 2nd July 1997 shares in the relevant company had been admitted to listing on the Official List of the Stock Exchange in pursuance of an application made in connection with the transaction, or series of transactions, by virtue of which the transferee company ceased to be a subsidiary undertaking of the floated company.
- (5) For the purposes of this section a company was, at the time of its flotation, carrying on an undertaking whose privatisation involved the imposition of economic regulation if that company, or a company which at that time was a subsidiary undertaking of that company, was at that time—
- (a) a public telecommunications operator, within the meaning of the Telecommunications Act 1984;
  - (b) an airport operator in relation to an airport subject to economic regulation under Part IV of the Airports Act 1986;
  - (c) the holder of an authorisation granted under section 7 of the Gas Act 1986, as originally enacted (public gas suppliers);
  - (d) the holder of an appointment under section 11 of the Water Act 1989 as the water undertaker for any area of England and Wales;
  - (e) the holder of a licence granted under section 6 of the Electricity Act 1989 or Article 10 of the Electricity (Northern Ireland) Order 1992 (licences authorising generation, transmission and supply of electricity); or
  - (f) a company authorised by a licence under section 8 of the Railways Act 1993 to be the operator of a railway asset.
- (6) In subsection (5) above "airport operator" has the same meaning as in the Airports Act 1986.

### **3 Administration of the windfall tax etc**

- (1) The windfall tax shall be under the care and management of the Commissioners of Inland Revenue.
- (2) Schedule 2 to this Act (which makes provision with respect to the management and collection of the windfall tax) shall have effect.
- (3) Subject to paragraph 19(5) of Schedule 8 to the Taxes Act 1988 (which is the provision about profit-related pay schemes that is amended by section 4 below), nothing in this Act or the Tax Acts shall have the effect of allowing or requiring any amount of windfall tax to be deducted in computing income, profits or losses for any of the purposes of the Tax Acts.

### **4 The windfall tax and profit-related pay**

- (1) In paragraph 19 of Schedule 8 to the Taxes Act 1988 (ascertainment of profits for the purposes of profit-related pay schemes)—
  - (a) in sub-paragraph (5)(b), after “1985” there shall be inserted “or section 3(3) of the Finance (No. 2) Act 1997”; and
  - (b) after paragraph (ff) of sub-paragraph (6) there shall be inserted the following paragraph—

“(fg) windfall tax charged under Part I of the Finance (No. 2) Act 1997;”.
- (2) Subsection (1) above has effect in relation to the preparation, for the purposes of any scheme, of a profit and loss account for any period ending on or after 2nd July 1997.
- (3) Subsection (1) above shall not have effect in relation to an existing scheme unless, before the end of the period of six months beginning with the day on which this Act is passed, the scheme is altered, with effect for all periods ending on or after 2nd July 1997, to take account of that subsection.
- (4) Provision made, in compliance with paragraph 20(1) of Schedule 8 to the Taxes Act 1988 (consistency in preparation of accounts), by any existing scheme that is altered to take account of subsection (1) above shall not prevent a profit and loss account from being prepared in accordance with the alteration.
- (5) An alteration of an existing scheme to take account of subsection (1) above shall be treated as being within section 177B of the Taxes Act 1988 (alterations which are registrable and which, when registered, cannot give rise to the Board’s power of cancellation).
- (6) In this section “existing scheme” means a scheme which at any time in the period beginning with 2nd July 1997 and ending immediately before the day on which this Act is passed was a registered scheme under Chapter III of Part V of the Taxes Act 1988.
- (7) The preceding provisions of this section shall cease to have effect, in accordance with the notes to Part VI(3) of Schedule 18 to the Finance Act 1997, as if they were included in the repeal of Schedule 8 to the Taxes Act 1988.

### **5 Interpretation of Part I**

- (1) In this Part—

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“company” means a company within the meaning of the Companies Act 1985 or the Companies (Northern Ireland) Order 1986;

“fixed price”, in relation to any offer of publicly-owned shares in a company, means—

- (a) a price set out in the offer; or
- (b) a price subsequently fixed by a Minister of the Crown in a case in which the amount of a first instalment of the price was fixed by the offer;

“the floated company”, in relation to the privatisation of a company by means of a flotation, means the company so privatised;

“public corporation”, in relation to a statutory transfer, means any body corporate in existence at the time of the transfer which—

- (a) had been established by or in accordance with the provisions of any enactment; and
- (b) had a membership consisting of, or including, persons appointed as members by a Minister of the Crown;

“publicly-owned”, in relation to any shares, means held by—

- (a) a Minister of the Crown or the Treasury; or
- (b) a nominee for a Minister of the Crown or for the Treasury;

“share” includes any right to require the issue of a share;

“statutory transfer” means a transfer under a transferring enactment or by or in accordance with a statutory scheme;

“subsidiary undertaking”—

- (a) except in relation to a company formed and registered in Northern Ireland, means a subsidiary undertaking within the meaning of Part VII of the Companies Act 1985; and
- (b) in relation to a company so formed and registered, means a subsidiary undertaking within the meaning of Part VIII of the Companies (Northern Ireland) Order 1986.

(2) In this section—

“enactment” means an enactment contained in a public general Act or any provision of Northern Ireland legislation;

“Minister of the Crown” includes a Northern Ireland department or the head of such a department;

“statutory scheme” means any scheme which—

- (a) has been made in exercise of any power or duty conferred or imposed by any enactment;
- (b) contains provision for the division of property, rights and liabilities between different persons, or for the transfer of property, rights and liabilities to a company; and
- (c) would not have taken effect or come into force but for having been approved by a Minister of the Crown;

“transferring enactment” means an enactment under which property, rights and liabilities of a person specified in the enactment became, by virtue of that enactment, the property, rights or liabilities of a company nominated under that enactment.

(3) In subsection (2) above the reference, in relation to a scheme, to its having been approved by a Minister of the Crown includes a reference to its having been made by a Minister of the Crown.

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- (4) The reference in subsection (1) above to Part VII of the Companies Act 1985 shall be construed, in relation to times in relation to which that Part had effect without the amendments made by the Companies Act 1989, as if those amendments did have effect in relation to those times.