

Status: Point in time view as at 28/07/2000.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2000, SCHEDULE 28. (See end of Document for details)

SCHEDULES

SCHEDULE 28

Section 98.

RECOVERY OF TAX PAYABLE BY NON-RESIDENT COMPANY

Introduction

- 1 This Schedule applies where—
- (a) an amount of corporation tax has been assessed on a company (“the taxpayer company”) for an accounting period,
 - (b) the whole or any part of that amount is unpaid at the end of the period of six months after the time when it became payable, and
 - (c) that company is not resident in the United Kingdom.

Companies that may be required to pay unpaid tax

- 2 (1) The following companies may, by notice under this Schedule, be required to pay the unpaid tax—
- (a) any company which was, at any time in the relevant period, a member of the same group of companies as the taxpayer company;
 - (b) any company which, at any time in the relevant period, was a member of a consortium which at that time owned the taxpayer company;
 - (c) any company which, at any time in the relevant period, was a member of the same group of companies as a company which at that time was a member of a consortium owning the taxpayer company.
- (2) In this Schedule “the relevant period”, in relation to an amount of unpaid corporation tax for an accounting period of the taxpayer company, means the period—
- (a) beginning with whichever is the later of—
 - (i) twelve months before the start of that accounting period, and
 - (ii) 1st April 2000; and
 - (b) ending when the unpaid tax first became payable.
- (3) Two companies shall be regarded as members of the same group of companies—
- (a) for the purposes of sub-paragraph (1)(a), whenever one is the 51% subsidiary of the other or both are 51% subsidiaries of a third company;
 - (b) for the purposes of sub-paragraph (1)(c), whenever one would be treated as a member of the same group of companies as the other for the purposes of Chapter IV of Part X of the Taxes Act 1988 (group relief).
- (4) For the purposes of this Schedule—
- (a) a company shall be treated as a member of a consortium at any time when it would fall to be so treated for the purposes of Chapter IV of Part X of the Taxes Act 1988 (group relief); and

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- (b) references to a company being owned by a consortium shall be construed in the same way as any such references falling for the purposes of that Chapter to be construed in accordance with section 413(6)(b) of the Taxes Act 1988.

Notice requiring payment of unpaid tax

- 3 (1) The Board may serve a notice on any company within paragraph 2(1) requiring it, within 30 days of the service of the notice, to pay—
- (a) the amount of the unpaid tax, or
 - (b) in a consortium case, the appropriate proportion of that amount (see paragraph 5).
- (2) The notice must state—
- (a) the amount of corporation tax assessed on the taxpayer company for the accounting period in question that remains unpaid,
 - (b) the date when it first became payable, and
 - (c) the amount required to be paid by the company on which the notice is served.
- (3) The notice has effect—
- (a) for the purposes of the recovery from that company of the amount required to be paid and of interest on that amount, and
 - (b) for the purposes of appeals,
- as if it were a notice of assessment and that amount were an amount of tax due from that company.
- (4) In section 87A(3) of the ^{M1}Taxes Management Act 1970 (date from which interest runs in the case of an assessment of a company's tax on another person)—
- (a) after “In relation to corporation tax assessed” insert “ or treated as assessed ”, and
 - (b) after “Schedule 18 to the Finance Act 1998” insert “ or Schedule 28 of the Finance Act 2000 ”.

Marginal Citations

M1 1970 c. 9.

Time limit for giving notice

- 4 (1) Any notice under this Schedule must be served before the end of the period of three years beginning with the date on which the liability of the taxpayer company to corporation tax for the accounting period in question is finally determined.
- (2) Where the unpaid tax is charged in consequence of a determination under paragraph 36 or 37 of Schedule 18 to the ^{M2}Finance Act 1998 (determination where no return delivered or return incomplete), that date shall be taken to be the date on which the determination is made.
- (3) Where the unpaid tax is charged in a self-assessment, including a self-assessment that supersedes a determination (see paragraph 40 of Schedule 18 to the Finance Act 1998), that date shall be taken to be the latest of—

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- (a) the last date on which notice of enquiry may be given into the return containing the self-assessment;
 - (b) if notice of enquiry is given, 30 days after the enquiry is completed;
 - (c) if more than one notice of enquiry is given, 30 days after the last notice of completion;
 - (d) if after such an enquiry the Inland Revenue amend the return, 30 days after notice of the amendment is issued;
 - (e) if an appeal is brought against such an amendment, 30 days after the appeal is finally determined.
- (4) If the unpaid tax is charged in a discovery assessment, that date shall be taken to be—
- (a) where there is no appeal against the assessment, the date when the tax becomes due and payable;
 - (b) where there is such an appeal, the date on which the appeal is finally determined.

Marginal Citations

M2 1998 c. 36.

Limit on amount payable in consortium case

- 5 (1) In a consortium case, the amount that the company may be required to pay by notice under this Schedule is limited to the proportion of the unpaid tax corresponding—
- (a) in the case of a company falling only within paragraph 2(1)(b), to the share which that company has had in the consortium for the relevant period;
 - (b) in the case of a company falling only within paragraph 2(1)(c), to the share which companies that have been members of the same group of companies as that company have had in the consortium for the relevant period;
 - (c) in the case of a company falling within paragraph 2(1)(b) and (c), to whichever is the greater of the amounts given by paragraphs (a) and (b) above.
- (2) A “consortium case” means a case where the company falls within paragraph 2(1)(b) or (c) (or both), but does not fall within paragraph 2(1)(a).
- (3) A member’s share in a consortium, in relation to the relevant period, is whichever is the lowest in that period of the following percentages—
- (a) the percentage of the ordinary share capital of the taxpayer company which is beneficially owned by that member;
 - (b) the percentage to which that member is beneficially entitled of any profits available for distribution to equity holders of the taxpayer company;
 - (c) the percentage to which that member would be beneficially entitled of any assets of the taxpayer company available for distribution to its equity holders on a winding-up.

If any of those percentages has fluctuated in the relevant period, the average percentage over the period shall be taken.

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- (4) Schedule 18 to the Taxes Act 1988 (equity holders and profits or assets available for distribution) applies for the purposes of sub-paragraph (3) above as it applies for the purposes of section 403C of that Act.

Supplementary provisions

- 6 (1) In this Schedule “company” means any body corporate.
- (2) A company that has paid an amount in pursuance of a notice under this Schedule may recover that amount from the taxpayer company.
- (3) A payment in pursuance of a notice under this Schedule is not allowed as a deduction in computing income or profits for any tax purposes.

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