

Status: Point in time view as at 01/01/2010.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, SCHEDULE 34. (See end of Document for details)

SCHEDULES

SCHEDULE 34

Section 111

STAMP DUTY: WITHDRAWAL OF GROUP RELIEF: SUPPLEMENTARY PROVISIONS

Introduction

- 1 (1) The provisions of this Schedule supplement section 111 (withdrawal of group relief).
- (2) Expressions used in this Schedule that are defined for the purposes of that section have the same meaning in this Schedule.

Relief not withdrawn if transferor company leaves group

- 2 (1) Section 111 does not apply if the transferee company ceases to be a member of the same group as the transferor company by reason of the latter company leaving the group.
- (2) The transferor company is regarded as leaving the group if the companies cease to be members of the same group by reason of a transaction relating to shares in—
 - (a) the transferor company, or
 - (b) another company that as a result of the transaction ceases to be a member of the same group as the transferee company.

Relief not withdrawn in case of winding-up

- 3 (1) Section 111 does not apply if the transferee company ceases to be a member of the same group as the transferor company by reason of anything done for the purposes of, or in the course of, winding up the transferor company or another company that is above the transferor company in the group structure.
- (2) For the purposes of this paragraph a company is “above” the transferor company in the group structure if it is the parent (within the meaning of the relevant group relief provision)—
 - (a) of the transferor company, or
 - (b) of another company that is above the transferor company in the group structure.

Relief not withdrawn in case of exempt acquisition

- 4 (1) Section 111 does not apply if—
 - (a) the transferee company ceases to be a member of the same group as the transferor company as a result of an acquisition of shares by another company (“the parent company”) in relation to which acquisition relief applies, and
 - (b) the transferee company is immediately after that acquisition a member of the same group as the parent company (“the new group”).

Status: Point in time view as at 01/01/2010.

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- (2) For this purpose—
- (a) “acquisition relief” means relief under section 75 of the Finance Act 1986 (c. 41); and
 - (b) references to an acquisition in relation to which such relief applies are to an acquisition such that an instrument effecting the transfer of the shares is exempt from stamp duty by virtue of that provision.
- (3) But if before the end of the period of two years beginning with the date on which the relevant instrument was executed—
- (a) the transferee company ceases to be a member of the new group, and
 - (b) at the time when [^{F1}the transferee company ceases] to be a member of the new group [^{F2}it or a relevant associated company (as defined in sub-paragraph (4) below) holds] an estate or interest in land that—
 - (i) was transferred [^{F3}to the transferee company] by the relevant instrument, or
 - (ii) is derived from an estate or interest that was so transferred,

^{F4}and that has not subsequently been transferred at market value by a duly stamped instrument on which *ad valorem* duty was paid and in respect of which group relief was not claimed],

section 111 and the provisions of this Schedule apply [^{F5}as if the transferee had then ceased to be a member of the same group as the transferor company and had then held the estate or interest referred to in paragraph (b).]
- [^{F6}(4) In sub-paragraph (3)(b) “relevant associated company”, in relation to the transferee company, means a company that is in the same group as the transferee company immediately before the transferee company ceases to be a member of the new group and which ceases to be a member of the new group in consequence of the transferee company so ceasing.]

Textual Amendments

- F1** Words in Sch. 34 para. 4(3)(b) substituted (retrospective to 15.4.2003) by [Finance Act 2003 \(c. 14\), s. 126\(6\)\(a\)\(i\)\(11\)](#) (with [s. 126\(9\)\(10\)](#))
- F2** Words in Sch. 34 para. 4(3)(b) substituted (retrospective to 15.4.2003) by [Finance Act 2003 \(c. 14\), s. 126\(6\)\(a\)\(ii\)\(11\)](#) (with [s. 126\(9\)\(10\)](#))
- F3** Words in Sch. 34 para. 4(3)(b)(i) substituted (retrospective to 15.4.2003) by [Finance Act 2003 \(c. 14\), s. 126\(6\)\(b\)\(11\)](#) (with [s. 126\(9\)\(10\)](#))
- F4** Words in Sch. 34 para. 4(3)(b) substituted (retrospective to 15.4.2003) by [Finance Act 2003 \(c. 14\), s. 126\(6\)\(c\)\(11\)](#) (with [s. 126\(9\)\(10\)](#))
- F5** Words in Sch. 34 para. 4(3) substituted (retrospective to 15.4.2003) by [Finance Act 2003 \(c. 14\), s. 126\(7\)\(11\)](#) (with [s. 126\(9\)\(10\)](#))
- F6** Sch. 34 para. 4(4) inserted (retrospective to 15.4.2003) by [Finance Act 2003 \(c. 14\), s. 126\(8\)\(11\)](#) (with [s. 126\(9\)\(10\)](#))

Interest

- 5 (1) If any duty payable under section 111 is not paid within the period of 30 days within which payment is to be made, interest is payable on the amount remaining unpaid.

Status: Point in time view as at 01/01/2010.

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- (2) The provisions of section 15A(3) to (5) of the Stamp Act 1891 (c. 39) (rate of interest on unpaid duty, etc) apply in relation to interest under sub-paragraph (1).

Duty of transferee company to notify particulars

- 6 (1) The transferee company shall, within the period of 30 days mentioned in section 111(2)(b) within which payment is to be made, notify the Commissioners of—
- (a) the date on which it ceased to be a member of the same group as the transferor company,
 - (b) the relevant land held by it at that time,
 - (c) the nature of the relevant instrument, the date on which it was executed, the parties to the instrument and the date on which the instrument was stamped,
 - (d) the market value of the land transferred to it by the relevant instrument at the date on which that instrument was executed, and
 - (e) the amount of duty and interest payable by it under section 111 or this Schedule.
- (2) In sub-paragraph (1)(b) the “relevant land” held by the transferee company means every estate or interest to in relation to which section 111(1)(c) applies.
- (3) In section 98(5) of the Taxes Management Act 1970 (c. 9) (penalty for failure to provide information), in the second column of the Table, at the appropriate place insert “paragraph 6 of Schedule 34 to the Finance Act 2002”.

Determination, collection and recovery of duty and interest

- 7 The provisions of regulations under section 98 of the Finance Act 1986 (c. 41) (stamp duty reserve tax: administration etc), and the provisions of the Taxes Management Act 1970 (c. 9) applied by those regulations, have effect with the necessary modifications in relation to—
- (a) the determination by the Commissioners of the duty payable under section 111 or the interest payable thereon,
 - (b) appeals against any such determination, and
 - (c) the collection and recovery of any such duty or interest,
- as if it were an amount of stamp duty reserve tax.

Recovery of group relief from from another group company or controlling director

- 8 (1) This paragraph applies where—
- (a) an amount is payable under section 111 or this Schedule by the transferee company,
 - (b) a notice of determination of the amount payable has been issued by the Commissioners, and
 - (c) the whole or part of that amount is unpaid six months after the date on which it became payable.
- (2) The following persons may, by notice under paragraph 9, be required to pay the unpaid amount—
- (a) the transferor company;

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- (b) any company that, at any relevant time, was a member of the same group as the transferee company and was above it in the group structure;
 - (c) any person who at any relevant time was a controlling director of the transferee company or of a company having control of the transferee company.
- (3) For the purposes of this paragraph—
- (a) a “relevant time” means any time between the execution of the relevant instrument and the transferee company ceasing to be a member of the same group as the transferor company;
 - (b) a company is “above” another company in a group structure if it is the parent (within the meaning of the relevant group relief provision)—
 - (i) of that company, or
 - (ii) of another company that is above that company in the group structure.
- (4) In this paragraph—
- “director”, in relation to a company, has the meaning given by section 168(8) of the Taxes Act 1988 (read with subsection (9) of that section) and includes any person falling within section 417(5) of that Act (read with subsection (6) of that section); and
- “controlling director”, in relation to a company, means a director of the company who has control of it (construing control in accordance with section 416 of the Taxes Act 1988).

Recovery of group relief from another group company or controlling director: procedure and time limit

- 9
- (1) The Commissioners may serve a notice on a person within paragraph 8(2) requiring him, within 30 days of the service of the notice, to pay the amount that remains unpaid.
 - (2) Any notice under this paragraph must be served before the end of the period of three years beginning with the date on which the notice of determination mentioned in paragraph 8(1)(b) is issued.
 - (3) The notice must state the amount required to be paid by the person on whom the notice is served.
 - (4) The notice has effect—
 - (a) for the purposes of the recovery from that person 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 determination and that amount were an amount of stamp duty reserve tax due from that person.
 - (5) A person who has paid an amount in pursuance of a notice under this paragraph may recover that amount from the transferee company.
 - (6) A payment in pursuance of a notice under this paragraph is not allowed as a deduction in computing any income, profits or losses for any tax purposes.

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Power to require information

- 10 (1) The Commissioners may by notice require any person to furnish them within such time, not being less than 30 days, as may be specified in the notice with such information (including documents or records) as the Commissioners may reasonably require for the purposes of section 111 or this Schedule.
- (2) [^{F7}A relevant lawyer] shall not be obliged in pursuance of a notice under this paragraph to disclose, without his client's consent, any information with respect to which a claim to professional privilege could be maintained.
- [^{F8}(2A) "Relevant lawyer" means a barrister, advocate, solicitor or other legal representative communications with whom may be the subject of a claim to professional privilege.]
- (3) In section 98(5) of the Taxes Management Act 1970 (c. 9) (penalty for failure to comply with notice to provide information), in the first column of the Table, at the appropriate place insert "paragraph 10 of Schedule 34 to the Finance Act 2002".

Textual Amendments

- F7** Words in Sch. 34 para. 10(2) substituted (1.1.2010) by Legal Services Act 2007 (c. 29), s. 211(2), Sch. 21 para. 135(a) (with ss. 29, 192, 193); S.I. 2009/3250, art. 2(h)
- F8** Sch. 34 para. 10(2A) inserted (1.1.2010) by Legal Services Act 2007 (c. 29), s. 211(2), Sch. 21 para. 135(b) (with ss. 29, 192, 193); S.I. 2009/3250, art. 2(h)

Supplementary

- 11 Section 111 and this Schedule shall be construed as one with the Stamp Act 1891 (c. 39).

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