



# Finance Act 1998

## 1998 CHAPTER 36

### PART III

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

### CHAPTER I

#### INCOME TAX AND CORPORATION TAX

##### *Changes in company ownership*

#### **114 Postponed corporation tax**

- (1) After section 767A of the Taxes Act 1988 there shall be inserted the following section—

**“767AA Change in company ownership: postponed corporation tax**

- (1) Where it appears to the Board that—
- (a) there has been a change in the ownership of a company (“the transferred company”),
  - (b) any corporation tax relating to an accounting period ending on or after the change has been assessed on the transferred company or an associated company,
  - (c) that tax remains unpaid at any time more than six months after it was assessed, and
  - (d) the condition set out in subsection (2) below is fulfilled,
- any person mentioned in subsection (4) below may be assessed by the Board and charged to an amount of corporation tax not exceeding the amount remaining unpaid.

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- (2) The condition is that it would be reasonable (apart from this section) to infer, from either or both of—
- (a) the terms of any transactions entered into in connection with the change, and
  - (b) the other circumstances of the change and of any such transactions, that at least one of those transactions was entered into by one or more of its parties on the assumption, as regards a potential tax liability, that that liability would be unlikely to be met, or met in full, if it were to arise.
- (3) In subsection (2) above the reference to a potential tax liability is a reference to a liability to pay corporation tax which—
- (a) in circumstances which were reasonably foreseeable at the time of the change in ownership, or
  - (b) in circumstances the occurrence of which is something of which there was at that time a reasonably foreseeable risk,
- would or might arise from an assessment made, after the change in ownership, on the transferred company or an associated company (whether or not a particular associated company).
- (4) The persons mentioned in subsection (1) above are—
- (a) any person who at any time during the relevant period had control of the transferred company;
  - (b) any company of which the person mentioned in paragraph (a) above has at any time had control within the period of three years before the change in the ownership of the transferred company.
- (5) In subsection (4) above, “the relevant period” means—
- (a) the period of three years before the change in the ownership of the transferred company; or
  - (b) if during the period of three years before that change (“the later change”) there was a change in the ownership of the transferred company (“the earlier change”), the period elapsing between the earlier change and the later change.
- (6) For the purposes of this section a transaction is entered into in connection with a change in the ownership of a company if—
- (a) it is the transaction, or one of the transactions, by which that change is effected; or
  - (b) it is entered into as part of a series of transactions, or scheme, of which transactions effecting the change in ownership have formed or will form a part.
- (7) For the purposes of this section—
- (a) references to a scheme are references to any scheme, arrangements or understanding of any kind whatever, whether or not legally enforceable, involving a single transaction or two or more transactions;
  - (b) it shall be immaterial in determining whether any transactions have formed or will form part of a series of transactions or scheme that the parties to any of the transactions are different from the parties to another of the transactions; and

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- (c) the cases in which any two or more transactions are to be taken as forming part of a series of transactions or scheme shall include any case in which it would be reasonable to assume that one or more of them—
  - (i) would not have been entered into independently of the other or others; or
  - (ii) if entered into independently of the other or others, would not have taken the same form or been on the same terms.
- (8) In this section references, in relation to the transferred company and an assessment to tax, to an associated company are references to any company (whenever formed) which, at the time of the assessment or at an earlier time after the change in ownership—
  - (a) has control of the transferred company;
  - (b) is a company of which the transferred company has control; or
  - (c) is a company under the control of the same person or persons as the transferred company.
- (9) A person assessed and charged to tax under this section shall be assessed and charged in the name of the company by whom the tax to which the assessment relates remains unpaid.
- (10) Any assessment made under this section shall not be out of time if made within three years from the date of the final determination of the liability of the company by whom the tax remains unpaid to corporation tax for the accounting period for which that tax was assessed.”
- (2) Subsection (1) above has effect in relation to changes in ownership occurring on or after 2nd July 1997 other than any change occurring in pursuance of a contract entered into before 2nd July 1997.

## **115 Information powers where ownership changes**

- (1) After section 767B of the Taxes Act 1988, there shall be inserted the following section—

### **“767C Change in company ownership: information**

- (1) This section applies where it appears to the Board that—
  - (a) there has been a change in the ownership of a company (“the subject company”); and
  - (b) in connection with that change a person (“the seller”) may be or become liable to be assessed and charged to corporation tax under section 767A or 767AA.
- (2) The Board may by notice require any person to supply to them—
  - (a) any document in the person’s possession or power which appears to the Board to be relevant for determining any one or more of the matters referred to in subsection (3) below; or
  - (b) any particulars which appear to them to be so relevant.
- (3) Those matters are—

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- (a) whether the seller is or may become liable as mentioned in subsection (1) above and the extent of the liability or potential liability; and
  - (b) whether the subject company or an associated company is or may become liable to be assessed to any tax in respect of which the seller is or could become liable as mentioned in subsection (1) above, and the extent of the liability or potential liability of the subject company or associated company.
- (4) Without prejudice to the following provisions of this section, the references in subsection (2) above to documents and particulars are references to the documents and particulars specified or described in the notice.
- (5) A notice under subsection (2) above must specify the period, which must not be less than 30 days, within which the notice must be complied with.
- (6) Any person to whom any documents are supplied under this section may take copies of them or of any extracts from them.
- (7) A notice under subsection (2) above shall not oblige a person to supply any documents or particulars relating to the conduct of any pending appeal relating to tax.
- (8) In relation to any notice under subsection (2) above—
- (a) subsection (4) of section 20B of the Taxes Management Act 1970 (rules relating to copies of documents) shall apply as it applies in relation to a notice under section 20(1) of that Act; and
  - (b) subsections (8) to (14) of section 20B of that Act (rules about obtaining documents etc. from professional advisers) shall apply as they apply in relation to a notice under section 20(3) of that Act but as if any reference to an inspector were a reference to the Board;
- and subsection (8C) of section 20 of that Act (exclusion of personal records and journalistic material) shall apply for the purposes of this section as it applies for the purposes of that section.
- (9) In this section references, in relation to the subject company and an assessment to tax, to an associated company are references to any company which, at the time of the assessment or at an earlier time after the change in ownership—
- (a) has control of the subject company;
  - (b) is a company of which the subject company has control; or
  - (c) is a company under the control of the same person or persons as the subject company.
- (10) In this section “document” means anything in which information of any description is recorded.”
- (2) In the Table in section 98 of the Taxes Management Act 1970 (penalties in respect of certain information provisions), after the entry in the first column relating to section 765A of the Taxes Act 1988, there shall be inserted the following entry—

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“section 767C;”.

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- (3) The preceding provisions of this section have effect in relation to changes in ownership occurring on or after 2nd July 1997 other than any change occurring in pursuance of a contract entered into before 2nd July 1997.

## **116 Provisions supplemental to sections 114 and 115**

- (1) After subsection (1) of section 767B of the Taxes Act 1988 (supplementary provision about changes of company ownership), there shall be inserted the following subsection—
- “(1A) In relation to corporation tax assessed under section 767AA, section 87A of the Management Act shall have effect as if the references to the date when the tax becomes due and payable were references to the date when the tax became due and payable by the transferred company or the associated company (as the case may be).”
- (2) In subsection (2) of that section—
- (a) after “767A” there shall be inserted “or 767AA”; and
  - (b) at the end there shall be added “or the transferred company or associated company (as the case may be)”.
- (3) In subsection (4) of that section, for “section 767A” there shall be substituted “sections 767A, 767AA and 767C”.
- (4) In subsection (10) of that section, for “section 767A” there shall be substituted “sections 767A and 767AA”.
- (5) In section 769 of that Act (rules for ascertaining change in ownership of a company)—
- (a) in subsections (1) and (5), after “767A,” there shall be inserted “767AA, 767C,”;
  - (b) in subsection (2)(d), after “767A,” there shall be inserted “767AA,”; and
  - (c) in subsections (2A) and (9), after “767A” there shall be inserted “, 767AA or 767C”.
- (6) The preceding provisions of this section have effect in relation to changes in ownership occurring on or after 2nd July 1997 other than any change occurring in pursuance of a contract entered into before 2nd July 1997.