

SCHEDULES

SCHEDULE 16

Section 98

RECOVERY OF UNPAID DIVERTED PROFITS TAX DUE FROM NON-UK RESIDENT COMPANY

PART 1

IMPOSING LIABILITY ON UK REPRESENTATIVE OF NON-UK RESIDENT COMPANY

- 1 (1) Chapter 6 of Part 22 of CTA 2010 (collection etc of tax from UK representatives of non-UK resident companies) has effect as if the enactments referred to in section 969(1) of that Act included enactments relating to diverted profits tax so far as they make provision for or in connection with the charging, collection and recovery of diverted profits tax or of interest on that tax.
- (2) In its application in accordance with sub-paragraph (1), that Chapter has effect subject to the following modifications.
- (3) In a case where section 86 applies in relation to company, that Chapter applies in relation to the avoided PE in relation to that company as it would apply to a permanent establishment in the United Kingdom through which the company carries on a trade.
- (4) In section 969(3) of that Act references to “chargeable profits of the company attributable to that establishment” are to be read as references to “taxable diverted profits arising to the company”.
- (5) In section 971 of that Act references to the giving or service of a notice includes a reference to the issuing of a notice.

PART 2

RECOVERY OF DIVERTED PROFITS TAX FROM RELATED COMPANIES

Cases in which this Part applies

- 2 (1) This Part of this Schedule applies if—
 - (a) an amount of diverted profits tax has been charged on a company for an accounting period,
 - (b) the whole or any part of that amount is unpaid at the end of the due and payable date, and
 - (c) the company is non-UK resident.
- (2) In this Part of this Schedule “the taxpayer company” means the company mentioned in sub-paragraph (1).

Meaning of “the relevant period”

- 3 In this Part of this Schedule “the relevant period”, in relation to an amount of unpaid diverted profits tax for an accounting period of the taxpayer company, means the period—
- (a) beginning 12 months before the start of the accounting period, and
 - (b) ending when the unpaid tax became payable.

Meaning of “related company”

- 4 (1) A company is a “related company”, for the purposes of this Part of this Schedule, if, at any time in the relevant period, it was a member—
- (a) of the same group as the taxpayer company,
 - (b) of a consortium which at that time owned the taxpayer company, or
 - (c) of the same group as a company which at that time was a member of a consortium owning the taxpayer company.
- (2) For the purposes of sub-paragraph (1)(a) two companies are members of the same group if—
- (a) one is the 51% subsidiary of the other, or
 - (b) both are 51% subsidiaries of a third company.
- (3) For the purposes of sub-paragraph (1)(c), two companies are members of the same group if they are members of the same group of companies within the meaning of Part 5 of CTA 2010 (group relief).
- (4) For the purposes of this Part of this Schedule—
- (a) a company is a member of a consortium if it is a member of a consortium within the meaning of Part 5 of CTA 2010, and
 - (b) a company is owned by a consortium if it is owned by a consortium within the meaning of that Part.
- (5) In this paragraph “51% subsidiary” has the meaning given by section 1154 of CTA 2010.

Notice requiring payment of unpaid tax

- 5 (1) An officer of Revenue and Customs may serve a notice on a related company requiring it, within 30 days of the service of the notice, to pay—
- (a) in a case which is not a consortium case, the amount of the unpaid tax, or
 - (b) in a consortium case, the proportion of that amount found under paragraph 7.
- (2) The notice must state—
- (a) the amount of diverted profits tax charged 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 which is 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,

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as if it were a charging notice and that amount were an amount of diverted profits tax charged on that company.

- (4) In this Part of this Schedule “consortium case” means a case where the related company is not within paragraph 4(1)(a).

Time limit for giving notice

- 6 A notice under this Part of this Schedule must be served before the end of the period of 3 years beginning with the date when the charging notice or supplementary charging notice imposing the charge to tax was issued.

Amount payable in consortium case

- 7 (1) In a consortium case, the amount that the related company may be required to pay by notice under this Part of this Schedule is the proportion of the unpaid tax corresponding—
- (a) if the company is only within paragraph 4(1)(b), to the share which the company has had in the consortium for the relevant period,
 - (b) if the company is only within paragraph 4(1)(c), to the share which companies that have been members of the same group of companies as the company have had in the consortium for the relevant period, or
 - (c) if the company is within paragraph 4(1)(b) and (c), to whichever is the greater of the amounts given by paragraph (a) and (b).
- (2) For the purposes of this paragraph, a member’s share in a consortium, in relation to the relevant period, is whichever is the lowest in that period of the percentages specified in sub-paragraph (3).
- (3) Those percentages are—
- (a) the percentage of the ordinary share capital of the taxpayer company which is beneficially owned by the member,
 - (b) the percentage to which the member is beneficially entitled of any profits available for distribution to equity holders of the taxpayer company, and
 - (c) the percentage to which the member would be beneficially entitled of any assets of the taxpayer company available for distribution to its equity holders on a winding up.
- (4) If any of the percentages mentioned in sub-paragraph (3) has fluctuated in the relevant period, the average percentage over the period is to be taken.
- (5) Chapter 6 of Part 5 of CTA 2010 (equity holders and profits or assets available for distribution) applies for the purposes of sub-paragraph (3) as it applies for the purposes of sections 143(3)(b) and (c) and 144(3)(b) and (c) of that Act.

Part 2: supplementary

- 8 (1) A company that has paid an amount in pursuance of a notice under this Part of this Schedule may recover that amount from the taxpayer company.
- (2) A payment in pursuance of a notice under this Part of this Schedule is not allowed as a deduction in calculating income, profits or losses for any tax purposes.