

Introduction

Section 36 Finance Act (FA) 1998 allows the Inland Revenue to make Group Payment Arrangements (GPA) with groups of companies. Joining a GPA is optional. Companies that enter into a GPA will be entering into a contract (the Arrangement Document) with the Board of Inland Revenue.

Each group of companies must decide what is right for them and whether they want to be part of an arrangement. The Arrangement Document enclosed with these Notes sets out the terms and the way these arrangements will operate

These Notes provide more information on the terms and conditions for a GPA and how it is administered. The Notes also clarify some of the more complex Clauses, and provide (under 'Interpretation') some explanations of the terms used.

The Notes have no effect on the terms of the GPA itself. They are for guidance only and you should carefully consider the Arrangement Document itself before deciding to proceed. The terms of the GPA cannot be negotiated.

A group with an up to date returns and payment position will not normally have to concern itself with those provisions designed to help us recover tax in certain circumstances.

The Group Payment Team (GPT) will be glad to give you any further clarification that you may need.

Background

GPAs help groups with the payment of tax. The GPA can also allocate payments between the members of the group so mitigating any potential differential interest charge.

If any of the Participating Companies (see 'Interpretation' on page 2) pay by instalments (under Statutory Instrument 1998 No 3175) a GPA enables the group to

- manage any uncertainty over the corporation tax liabilities of individual companies between the instalment due dates and the filing of the tax returns
- nominate one company to pay each instalment in one amount on behalf of companies in a group.

A GPA does not alter the fact that each company is liable for its own corporation tax, although a GPA also makes the Nominated Company liable to discharge the corporation tax liabilities of all the companies participating in that GPA. A GPA can apply both to companies whose liability is payable by instalments, and those whose liability is not payable by instalments. But note that a company that is not liable to pay its corporation tax liability by

instalments does not become liable to do so simply by being a member of a GPA.

We will be prepared to enter into a GPA with you but this will be at our discretion. Circumstances in which we may not enter an arrangement include:

- you do not send us the completed and signed Arrangement Document at least one month before the first instalment payment is due for accounting periods to be covered by the GPA.
- you enter the same company into more than one GPA for the same relevant Accounting Period.
- not all the proposed Participating Companies have a Relevant Accounting Period ending on the same date as that of the Nominated Company
- not all the proposed Participating Companies are up to date with their filing and payment obligations
- the 51% group relationship required by section 36 FA 1998 does not exist between the individual companies at the time the Arrangement Document is signed.

Subject to the possibility of termination the arrangement will apply to the first Relevant Accounting Period and then to subsequent Relevant Accounting Periods.

The standard Arrangement Document is structured around a Period of Account. This is any period not exceeding 12 months for which the Nominated Company draws up its accounts.

There may be cases where this causes problems. For instance, when the Nominated Company draws up an account for a period exceeding 12 months. This could happen where a company is taken over and required to bring its reporting date into line with the new parent.

An Annex to the contract is available, which the group may be able to adopt if it wishes. The effect of the Annex is to treat the long period of account as two periods of account for the purposes of the GPA. A copy of this annex may be obtained from the GPT.

It is a condition of the contract that the Nominated Company is resident in the United Kingdom. We would usually expect this to be the case but, in practice, we are prepared to be flexible. We will consider requests where a group of companies liable to corporation tax want the Nominated Company to be a company resident in the European Union.

What you need to do

If you decide to enter into a GPA with us, you must return the completed and signed Arrangement Document. You must enter on the relevant page the start and end dates of the first period to which you want the arrangement to apply.

Only include active companies in a GPA and provide their names in a schedule to the arrangement document. Any dormant companies, which start to trade or acquire some other source of income later, can join the Arrangement at that time, subject to the conditions set out at Clause 16.

Please check that you have provided all the relevant information by making appropriate entries in the Arrangement Document. These can be found on pages 1, 2, 5, 6, 7 and 8 and are indicated by a white box. Please also ensure that the schedule (pages 9 and 10) is fully completed and that a person authorised by the Nominated Company (normally a director) to do so signs and dates the Arrangement Document.

Do not complete the date on page one. We will fill this in.

The Group Payment Team (GPT)

Send the completed Arrangement Document to the GPT. Details of how to contact the GPT are given at the end of this section. The GPT will get in touch with you to confirm whether the group will be brought into the GPA scheme.

They will deal with all matters relating to the administration of the GPA, including repayments, apportionments, and changes to the membership of the GPA.

Where the GPA provides for anything to be done in writing to the Nominated Company the GPT will do this. All agreements under the GPA, including the GPA itself, will be signed by the GPT on behalf of the Board.

Where the GPA requires you to do anything in writing you should meet this requirement by writing to the GPT.

In order to let us decide whether or not to enter into an arrangement with you the completed Arrangement Document must reach the GPT no later than one month before the first instalment payment for the group is due. If we do not receive the document by then we cannot guarantee to reach a decision and enter into an arrangement in time for the Relevant Accounting Period.

If we decide to enter into an arrangement

A separate taxpayer reference will be allocated to the GPA and all payments under the arrangement should be made using this reference. We have seen a number of cases where a company has quoted the wrong reference, leading to payments being allocated automatically to the wrong period or to the record of the wrong company rather than the group record. This is not easy for us to spot and we cannot guarantee to correct such errors before the Closing Date (see 'Interpretation').

All payments made for a GPA **must** be made by electronic funds transfer (CHAPS, BACS) or bank giro credit. Please indicate on the Schedule to the Arrangement Document whether you intend to pay by BACS, CHAPS or bank giro credit. The GPT will also give you details of how to make payments under the arrangement. If we make any repayments we will usually repay by BACS so you should also provide the relevant Account Name, Number and Bank Sort Code.

Group Payment Team

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Interpretation

Clause 1

This clause defines the terms used in the GPA. The definitions themselves are not repeated in these Notes - please refer to the GPA itself. Below is some additional material but note that it does not define the terms.

Participating Company

Not all companies in a group have to be in an arrangement or in the same arrangement.

The set of Participating Companies can change over time as companies join and leave the group. Clause 17 requires you to provide us with a list of the Participating Companies in relation to each Period of Account where there is a change from the previous Period of Account.

Relevant Accounting Period

The Arrangement Document allows a company in a group to take part in a GPA if its accounting periods differ from the Period of Account under some circumstances.

This flexibility allows newly formed and newly acquired companies to be included within a GPA. It will also allow a company to remain within an arrangement if it proves to have more than one tax accounting period within a 12 month account due to the operation of Section 12(2) and (3) Income and Corporation Taxes Act 1988 (ICTA). (This may happen, for example, where a company ceases to trade during the period covered by its accounts and becomes an investment company.)

Clause 3 Payment obligations of the nominated company in relation to a period of account

The Nominated Company undertakes to discharge the liabilities of the Participating Companies. They must be paid on the dates they become payable, or are treated by the Corporation Tax Instalment

Regulations (1999) as becoming due and payable, by the Participating Companies, for the Relevant Accounting Periods.

It is up to the Nominated Company to calculate the correct amount of payments due and to make sure these are made on the correct dates. The amount to be discharged by the Nominated Company will not be affected by changes to the liabilities of the Participating Companies occurring after the Closing Date.

So any increase in the liability of a Participating Company occurring after the closing Date will be the responsibility of that company. This will include adjustments arising from an enquiry.

Clause 4 Claims for repayment of excess amounts by reason of change of circumstances

The Nominated Company can claim a repayment. It can do this if it believes that

- there is a change in the circumstances of any of the Participating Companies, and
- its liability under the arrangement is likely to be less than previously calculated, and
- the amount(s) which it has paid exceed(s) the amount(s) that would have been due and payable under the arrangement at that point in time.

This might be the case where, for example, it becomes aware that group relief is available or profits have been overestimated.

The Nominated Company should write or preferably send a fax to the GPT before the Closing Date and claim repayment. It has to explain the grounds for the claim and tell them which payment(s) (or part(s) thereof), it wants repaid.

We may repay part or all of the amount claimed. The GPT will tell you what payment(s) or part payment(s) are being repaid.

Please note that interest is not added at this point to any repayment. Interest is only calculated and payable to the Nominated Company after the Closing Date when total payments have been apportioned to individual Participating Companies.

Clause 5 Limitations on the board's right of recovery

We can only recover outstanding liabilities from the individual Participating Companies, **after** the Closing Date. However, the Nominated Company also still retains its responsibilities under Clause 3.

Clause 6 Calculation of monies payable under the arrangement (or credit balances)

After the Closing Date the GPT will send you a Notice (as described in Clause 6) showing

- the total amount paid
- the total liabilities of all the Participating Companies, either as recorded in their self assessments or by Revenue determinations, and
- any credit or debit balance

If we have made a mistake in our calculation please draw it to the attention of the GPT who will amend it to reflect the correct position. Otherwise our calculation will be final and conclusive, and binding on the Nominated Company.

Clause 7

You can ask us to repay any overpayment shown on the notice under Clause 6, up to the earlier of:

- 30 days from the date we gave notice, or
- the date the Nominated Company tells us (Clause 8.1) how it wants to apportion the amount paid between the Participating Companies.

If you want a repayment, write to the GPT and specify which payment(s), or part payment(s), you want us to repay. Such repayments may be made either by the GPT or by the office with responsibility for the case. Please note that interest is not added at this point to any repayment. For each Period of Account interest is only calculated and payable to the Nominated Company after the Closing Date and when total payments have been apportioned to individual Participating Companies.

If you do not ask for a repayment any overpayment forms part of the amount to be apportioned or reapportioned under Clauses 8 to 12.

Clause 8 Apportionment of payments

After receiving our Notice under Clause 6, the Nominated Company is entitled to tell us how payments that have not been already repaid or apportioned should be apportioned amongst the Participating Companies. (See clauses 9, 14 and 19 for some exceptional circumstances where we have the power to apportion payments.)

You should send a written notice of this apportionment to the GPT. We suggest you use the form they supply. This helps them match your request with the details already shown on the computer record. You can do this at any time before we give notice under Clause 9 below. In practice, we suggest you tell us your apportionment within 30 days from the date of our notice under clause 6, unless you want us to apportion under clause 9.

The payments to be apportioned are net of any repayments made under Clause 4.2 or Clause 7.1, and net of any other apportionments already made (for example to a departing company).

Clause 9

To the extent that payments remain unapportioned under Clause 8 the GPT will write to you with our apportionment. The Nominated Company has the right to amend our apportionment if it does so within 30 days from the date we send our figures.

The purpose of this Clause is to ensure that matters move ahead after the Closing Date and that we can begin the process of finalising liabilities with individual companies.

Clause 10

This Clause allows us to reapportion payments among the Participating Companies if the liabilities of one or more of them remains outstanding after the Nominated Company's apportionment under Clause 8, or our apportionment under clause 9. The Nominated Company cannot amend such a reapportionment. The GPT will write to you if you wish to make such a reapportionment.

Under clause 10.2 if we reapportion we:

- (a) ignore any reduction in liabilities occurring after the closing date,
- (b) cannot apportion any payments made after the first apportionment. Such payments are allocated against any increase in the liabilities of the companies by whom or on whose behalf the payment was made,
- (c) can only reapportion to the extent needed to cover liabilities.

Clause 11

Payments made by the Nominated Company are deemed to have been made by the Participating Companies in the amounts finally apportioned to them, and on the dates they were made by the Nominated Company.

Interest will be charged and/or paid accordingly. The word "finally" is there to indicate that, in cases where we reapportion payments, it is our final apportionment that determines what a company is deemed to have paid.

Clause 12

If one or more of the Participating Companies does not deliver its company tax return within 18 months after the end of the accounting period (or, if the filing date is later than that, by the filing date), it may be liable to a tax-related penalty. For the purpose of possible liability to any tax-related penalty, and not for any other purpose, the GPA apportions payments in the following order. To any Participating Companies:

1. which have not incurred a late-filing penalty
2. which have incurred a tax-related penalty at the lower rate of 10%
3. which have incurred a tax-related penalty at the higher rate of 20%.

This apportionment only affects the calculation of any tax-related penalty and does not affect interest calculations.

Clause 13 Removal of companies from the arrangement otherwise than by agreement

The Nominated Company must immediately remove any Participating Company that ceases to be a member of the group, or which does not have a Relevant Accounting Period. You should tell the GPT in writing (and see also Clause 17). The Nominated Company can only be changed by agreement and cannot be removed from the GPA under this clause.

We can remove a company from the arrangement if

- we have reason to believe that it was not a member of the group when it entered the GPA , or
- if we consider that the Nominated Company should have removed that company but failed to do so

We can do this at any time up to six months after the Closing Date. If we do, the GPT will tell the Nominated Company in writing.

Clause 14

If a company is removed under Clause 13 then:

- (a) The Nominated Company has no obligations for the liabilities of the departing company in respect of any accounting period ending after the day notice is given.
- (b) We can recover such liabilities direct from the departing company
- (c) If no determination has been made or a return filed for the departing company, the Nominated Company can, by writing to us, apportion payments to that company. Such payments must not previously have been apportioned, or repaid.

Where we remove a company after apportionments have been made (under clause 8.1), the Nominated Company will be allowed to reapportion payments if it does so within 30 days of our notice of removal. Apportionments made under this clause cannot be apportioned or re-apportioned by the Board under other provisions of the GPA.

Clause 15 Removal of companies from the arrangement by agreement

Companies may leave an existing GPA by agreement between the Nominated Company and us. The Nominated Company should write to the GPT with its proposals. Once removal is agreed then the rights and obligations of both parties in relation to that company end, as follows.

For a large company (under the Instalment Regulations SI 3175 1998) these rights and obligations end only in respect of any accounting period where the date of the first instalment payment falls after the date of the removal.

If the company is not a large company these rights and obligations end only in respect of any accounting period for which, if it were a large company, the date of the first instalment payment would fall after the date of the removal.

Removal of a company from the arrangement does not affect the arrangement, or the obligations and rights of the other parties to the arrangement, except as specified in clauses 14 and 15 above.

Clause 16 Addition of companies to the arrangement

Companies may join an existing GPA. The Nominated Company should write to the GPT with its proposals. Once agreed the rights and obligations of both parties in relation to that company begin. But these begin only in respect of any Relevant Accounting Period where the date of the first instalment payment has not yet fallen due.

If the company is not a large company these rights and obligations begin only in respect of any accounting period for which, if it were a large company, the date of the first instalment payment would fall after the date of entry.

Clause 17 Provision of list of participating companies and notification of intended change of period of account

When a company has joined or left the GPA during a Period of Account, the Nominated Company must provide us with a list of Participating Companies. You may find it convenient to do this when the GPT contact you each year with the new reference for your next payments.

The Nominated Company must also tell the GPT in writing when it intends to draw up its accounts to a date other than a date to which it drew them up in the previous calendar year.

Clause 18 Termination of the arrangement by the nominated company or the board

This is a termination Clause that allows either party to terminate the GPA at any time by giving written notice to that effect to the other party. Where this happens, the rights and obligations under the arrangement will be terminated in respect of Relevant Accounting Periods for which the first instalment payment has not yet fallen due.

If the company is not a large company these rights and obligations are terminated only in respect of any Relevant Accounting Periods for which, if it were a large company, the date of the first instalment payment would fall after the date of termination.

An example of a case where we would normally wish to terminate would be where the necessary 51% group relationship had ended because the parent company had been placed in liquidation. Another example would be where an Insolvency Practitioner was appointed in respect of the Nominated Company. We would take the view that it no longer had the capacity to act on behalf of Participating Companies. Unless the other Participating Companies proposed an alternative Nominated Company (see clause 22) we would normally end the Arrangement.

Clause 19 Termination of the arrangement by the board in specified circumstances

This Clause describes specific circumstances where we can terminate a GPA :

- any of the Participating Companies fails to meet its obligations to pay corporation tax and file its company tax return for any accounting period. However, this does not include obligations that already existed before the GPA was entered into.
- the Nominated Company breaks any of its obligations under the arrangement.
- we have reason to believe that any member of the group of companies (including those not covered by the same or any GPA) may become liable to tax under Sections 767A or 767AA ICTA. (This is anti-avoidance legislation concerning changes in ownership of a company.)

In practice we will terminate an arrangement under this Clause only in cases where there has been a serious failure or breach or a pattern of non-compliance.

Clause 20

If we terminate an arrangement (under clause 19) certain consequences follow. Apart from apportionment (see below) once the GPA has been terminated the rights and obligations of the parties to the GPA end. However, unless the GPA states otherwise, anything already done or deemed to have been done by the date of termination will not be affected by termination.

With respect to payments that have not already been repaid or apportioned then further apportionment can take place as follows. Any apportionment is subject to the rules on finality (clause 11) and the rule allowing us to charge a tax related penalty (clause 12). If there is an outstanding claim for repayment (clause 4) we will consider this first before making any apportionment. If we apportion, or reapportion (clause 20(c) or (d)) neither the Nominated Company, nor any Participating Company, can amend our figures.

Once we have issued a notice under clause 19:

- (a) the Nominated Company has 30 days to apportion the payments
- (b) if the Nominated Company does not apportion we have the right to nominate another Participating Company which has the right to apportion. We can do this 60 days from giving notice under clause 19. Such a company will have 30 days from the date we give notice of nomination to carry out the apportionment.
- (c) if payments still remain unapportioned (whether or not the Board nominated an alternative company) we will apportion them to the Participating Companies.
- (d) we can reapportion payments, even where they have already been apportioned under (a) and (b) above, in order to discharge any outstanding liabilities. The GPT will give written notice of such reapportionments to the Nominated Company

(e) If we reappportion (under (d)) we do not take into account any reduction in liabilities that occurs after the date we gave notice under clause 19. The other rules in clause 10.2 will also apply.

Clause 22

By agreement between the Participating Companies and us, another Participating Company may become the Nominated Company in place of the original Nominated Company, or any successor Nominated Company.

Clause 23

The arrangement will be governed and construed in accordance with English Law.