

Section 223

- 19.1 A tax charge arises if an employer bears the tax which should have been deducted from a director's remuneration. These rules only apply to **company directors** (see paragraph 19.3 below).

They ensure that a tax charge will arise where both the following conditions are satisfied:

- the employer, on paying remuneration to a director, (or otherwise making it available to the director) fails to deduct the full amount of income tax due under the PAYE regulations, and
- someone other than the director pays to HMRC the tax the employer has failed to deduct and the director does not make good all the tax paid.

Example

A company votes remuneration of £10,000 to a director and then pays this or otherwise makes it available to the director without deducting tax of £4,000 under PAYE. At a later date, the company pays the £4,000 tax. The legislation ensures that in addition to the voted remuneration of £10,000, the director will be assessed upon remuneration equal to the tax accounted for by the company, that is £4,000, **minus** any amount made good by the director.

Limitation to directors*Sections 216(3), 223(7) and (8)*

- 19.2 The tax charge described above does not apply to company directors who are:
- full-time working directors who do not hold a 'material interest' in the company (see paragraphs 1.10, 1.11 and 1.16), or
 - directors of charities or non profit-making concerns (see paragraphs 1.12 to 1.16).

Year of assessment*Section 223(4)*

- 19.3 Subject to paragraph 19.5 below the tax charge upon the director will arise for the tax year in which the employer pays to HMRC the tax that was not deducted when remuneration was paid or otherwise made available to the director.

Payment of tax by the company after cessation of employment*Section 223(5)*

- 19.4 Where, after the directorship has ceased, the company pays the tax properly deductible from the remuneration paid to the director, the tax charge will arise in the tax year in which the directorship ceased. This prevents the avoidance of a tax charge until a time when the director is no longer employed or, if still employed, is no longer a director.

Section 223(6)(a)

- 19.5 No tax charge arises if the company pays the tax after the director's death. The director's estate does not have to make good on the director's behalf any tax accounted for by the company after his or her death.