

# Bill 6

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## PART 1

### CORPORATION TAX LIABILITY: MISCELLANEOUS RULES

#### CHAPTER 1

##### SURRENDER OF TAX REFUND WITHIN GROUP

#### 1 Power to surrender tax refund and effects of doing so [jAS0950]

- (1) This section enables a company (“the surrendering company”) –
- (a) which is a member of a group, and
  - (b) to which a tax refund is due for an accounting period,
- to surrender the refund (or any part of it) to another company (“the recipient company”) which is a member of that group.

Origin: FA 1989 s.102(1); drafting.

- (2) The surrender may be made only if –
- (a) the companies give notice to an officer of Revenue and Customs,
  - (b) the companies are members of the same group throughout the period beginning with the accounting period and ending on the day on which the notice is given, and
  - (c) the recipient company also has the accounting period as an accounting period.

Origin: FA 1989 s.102(1), (2), (3).

- (3) A “tax refund”, in relation to an accounting period of the surrendering company, means –
- (a) a repayment of corporation tax paid by it for the period, or
  - (b) a repayment of income tax in respect of a payment received by it in the period.

Origin: FA 1989 s.102(3).

- (4) So far as the recipient company is concerned, the effect of the surrender is as follows –
- (a) the recipient company is treated for corporation tax purposes as if it had paid an amount of corporation tax for the accounting period equal to the surrendered amount, and
  - (b) that payment is treated for those purposes as if it had been made on the relevant date,

but see section 3(3) and (4) for an exception to the rule in paragraph (b).

Origin: FA 1989 s.102(4).

- (5) So far as the surrendering company is concerned, the effect of the surrender is as follows –
- (a) the surrendering company is treated for corporation tax purposes as if it had received a repayment of tax equal to the surrendered amount, and
  - (b) that repayment is treated for those purposes as if it had been received on the relevant date.

Origin: FA 1989 s.102(4).

- (6) In addition, if the refund is a repayment of corporation tax, any interest relating to it which has been paid by the surrendering company is treated as if it had been paid by the recipient company.

Origin: FA 1989 s.102(4).

## 2 Interest on tax overpaid or unpaid [jAS0954]

- (1) This section applies if –
- (a) the surrendering company has surrendered an amount to the recipient company under section 1, and
  - (b) there is, as a result of any of subsections (7A) to (7C) of section 826 of ICTA, a period (“the relevant period”) for which the whole or any part of the surrendered amount would not have carried interest under that section if the refund had been made to the surrendering company.

Origin: FA 1989 s.102(4A).

- (2) The relevant period is excluded from any period for which the amount surrendered to the recipient company is to carry interest under that section.

Origin: FA 1989 s.102(4A).

- (3) The relevant period is excluded from any period for which a sum representing some or all of the surrendered amount would otherwise be treated (as a result of section 1) as not carrying interest under section 87A of TMA 1970.

Origin: FA 1989 s.102(4A).

- (4) The following assumption must be made in determining for the purposes of this section –
- (a) which part of any amount is applied in discharging a liability of the recipient company to pay corporation tax, and
  - (b) which part is represented by a refund to the recipient company.

Origin: FA 1989 s.102(4A).

- (5) The assumption is that the part in relation to which there is a period which would not have carried interest under section 826 of ICTA is applied in preference to any other part of that amount in or towards discharging the liability.

Origin: FA 1989 s.102(4A).

### 3 Definitions etc. [jAS0952]

- (1) For the purposes of section 1(1) and (2) two companies are members of the same group if (and only if) they would be for the purposes of Part [5] (group relief).

Origin: FA 1989 s.102(8).

- (2) For the purposes of section 1(4) and (5) “the relevant date”, in relation to a refund, means –
- (a) so far as it consists of a repayment of corporation tax paid by the surrendering company after the date on which it became due and payable under section 59D or 59E of TMA 1970, the day on which it was paid by the surrendering company, and
  - (b) otherwise, the date on which corporation tax for the accounting period of the surrendering company became due and payable.

Origin: FA 1989 s.102(5).

- (3) There is an exception to the rule in section 1(4) that the recipient company is treated as if it had paid an amount of corporation tax on the relevant date.

Origin: FA 1989 s.102(6).

- (4) For the purpose of working out the amount of any penalty to which the recipient company is liable under paragraph 18 of Schedule 18 to FA 1998 (failure to deliver return: tax-related penalty), the recipient company is treated instead as having paid the amount of corporation tax on the day on which the notice is given under section 1.

Origin: FA 1989 s.102(6).

- (5) A notice under section 1 must –
- (a) be given before the refund is made to the surrendering company,
  - (b) be given jointly by the surrendering company and the recipient company,
  - (c) specify the amount to be surrendered (which is referred to in sections 1, 2 and 4 as “the surrendered amount”), and
  - (d) be in such form as the Commissioners for Her Majesty’s Revenue and Customs may require.

Origin: FA 1989 s.102(2).

### 4 Payments for surrendered tax refunds [jAS0953]

- (1) This section applies if –
- (a) the surrendering company and the recipient company have an agreement between them in relation to the giving of notices under section 1 in respect of tax refunds,
  - (b) the two companies give a notice under that section in respect of a tax refund, and
  - (c) as a result of the agreement the recipient company makes a payment to the surrendering company that does not exceed the surrendered amount.

Origin: FA 1989 s.102(7).

- (2) The payment—
- (a) is not to be taken into account in determining the income and chargeable gains of either company for corporation tax purposes, and
  - (b) is not to be regarded for those purposes as a distribution.

Origin: FA 1989 s.102(7).

## SCHEDULES

### SCHEDULE 1

Section {j999996}

#### MINOR AND CONSEQUENTIAL AMENDMENTS [j2 (s.102 FA 1989)]

*Finance Act 1989 (c. 26)*

- 1 Omit section 102 of the Finance Act 1989 (surrender of company tax refund etc within group).

### SCHEDULE 2

Section {j999998}

#### REPEALS AND REVOCATIONS [j4 (s. 102 FA 1989)]

##### PART 1

s. 102 FA 1989

| <i>Reference</i>         | <i>Extent of repeal or revocation</i>          |
|--------------------------|--|
| Finance Act 1989 (c. 12) | Section 102.                                   |
| Finance Act 1993 (c. 34) | In Schedule 14, paragraph 11.                  |
| Finance Act 1995 (c. 4)  | In Schedule 24, paragraph 12(3).               |
| Finance Act 1999 (c. 16) | Section 89(2).<br>In Schedule 11, paragraph 3. |