

CHAPTER 8

PAYMENT OF CORPORATION TAX

The legislation is very useful for this chapter. It is worth taking the time to highlight the detail included in this chapter in the legislation using the various references provided.

8.1 Introduction

There are two types of company for payment purposes; those who pay tax at the main rate and those who do not.

Small companies (including marginal relief companies) are required to pay all of their corporation tax 9 months and 1 day after the end of the chargeable accounting period.

TMA 1970,
s.59D

For example, where a chargeable accounting period ends on 31 December 2010, the due and payable date for corporation tax is 1 October 2011.

Large companies are required to pay their tax by instalments.

Large companies are defined as those who have augmented profits (taxable total profits + FII) in excess of £1,500,000. This figure is adjusted for short chargeable accounting periods and associated companies.

In summary, companies that pay tax at the main rate (currently 28% for FY 2010) pay tax by instalments. All other companies pay tax 9 months and one day after the chargeable accounting period.

HMRC has the power to make regulations requiring electronic communications to be used by specified persons to deliver specified information relating to a tax matter.

FA 2002,
s.135

They may also make provision as to the manner of proving whether use of electronic communications is taken as having resulted in the delivery of information, the time of delivery, by whom the information was delivered, the contents, the contents of any records, and related matters.

Regulations may also provide for HMRC's powers of direction, the use of intermediaries, notification to be given to a person required to deliver information electronically, and penalties of up to £3,000 for non-compliance.

FA 2007, s.93
FA 2007, s.94

Provisions in FA 2007 extend the existing legislation relating to mandatory electronic filing to apply to all the taxes and duties for which HMRC are responsible.

SI 2009/3218

All company tax returns delivered after 31 March 2011 for accounting periods ending after 31 March 2010 must be filed online. In addition, corporation tax payments made on or after 1 April 2011 must be made electronically.

8.2 Payment of tax by instalments

SI 1998/3175

Companies who paid corporation tax at the main rate in the previous chargeable accounting period will have an obligation to pay tax by instalments.

The first year that a company is large, there is no need to pay tax by instalments, unless augmented profits exceed £10 million.

SI 1998/3175
Reg 3

The £10 million is divided among all the associated companies and is reduced for chargeable accounting periods which are less than 12 months long. However, the number of associated companies is arrived at by looking at the associated companies at the end of the immediately preceding chargeable accounting period.

Main rate companies whose CT liability is below £10,000, are exempt from instalment payments. These could be companies that pay tax at 28% (FY 2010), but are part of a very large group, so their individual liability is relatively small.

SI 1998/3175
Reg 2

The instalment payments are due as follows:

SI 1998/3175
Reg 5

- (i) The first payment is due 6 months plus 13 days from the start of the chargeable accounting period;
- (ii) Subsequent payments are due 3 months after the previous instalment;
- (iii) Final payment is due 3 months plus 14 days from the end of the chargeable accounting period.

All tax due by instalments must be paid by the due date for the final payment, otherwise interest will run.

Illustration 1

Assume we have a chargeable accounting period for the year ending 31 March 2011.

The first instalment will be due 6 months plus 13 days from the start of this accounting period, i.e. 14 October 2010.

The next instalment is due 3 months later, i.e. 14 January 2011.

The following instalment is due 3 months after the previous, i.e. 14 April 2011.

The following instalment is due 3 months after the previous, i.e. 14 July 2011.

As this is the final instalment, it cannot be later than 3 months and 14 days from the end of the chargeable accounting period, i.e. 14 July 2011.

This is shown diagrammatically in a timeline at the end of the chapter.

8.3 Amount due by instalments

The amount of each instalment is based on the corporation tax liability of the **current chargeable accounting period**, even though the company at the time of making the first instalment is only half way through the accounting period.

Each instalment is calculated using the formula:

SI 1998/3175
Reg 5(5)

$$\frac{3}{N} \times \text{estimated corporation tax liability}$$

where N is the number of months in the chargeable accounting period.

We must identify **how many instalments** there will actually be, using the $\frac{3}{N}$ formula. For a 12 month chargeable accounting period, the instalments will be $\frac{3}{12}$ ths, $\frac{3}{12}$ ths, $\frac{3}{12}$ ths and $\frac{3}{12}$ ths, of the tax due by instalments. This gives a total of four instalments, which are due.

For a 10 month accounting period, for example, the instalments will be as follows, $\frac{3}{10}$ ths, $\frac{3}{10}$ ths, $\frac{3}{10}$ ths (which gives us $\frac{9}{10}$ ths) and the final instalment will be just $\frac{1}{10}$ th. If we pay another $\frac{3}{10}$ ths we will actually have paid too much. This once again gives us four instalments.

For an 8 month accounting period the instalments due will be $\frac{3}{8}$ ths, $\frac{3}{8}$ ths and $\frac{2}{8}$ ths, which gives only three instalments. For a 5 month period the instalments due will be $\frac{3}{5}$ ths and $\frac{2}{5}$ ths, which only gives two instalments.

Illustration 2

Assume we have a chargeable accounting period for the year ending 31 March 2011, with profits of £2 million. This gives us a corporation tax liability at 28% of £560,000.

Each instalment amount will be $\text{£}560,000 \times \frac{3}{12} = \text{£}140,000$.

The first instalment of £140,000 will be due for payment on the 14 October 2010. The next 3 instalments will each be £140,000 due on 14 January, 14 April and 14 July 2011.

Illustration 3

Consider an 8 month chargeable accounting period ended 31 December 2010 and a corporation tax liability of £800,000. Our first step is to work out how many instalments there actually are. Here this will be $\frac{3}{8}$ ths, $\frac{3}{8}$ ths and $\frac{2}{8}$ ths, which is the 3 instalments.

The first instalment is due 6 months plus 13 days from the start of the chargeable accounting period (i.e. from 1 May 2010), which takes us to 14 November 2010. The next instalment is due 3 months later, which is 14 February 2011.

The final instalment cannot be **later than 3 months plus 14 days** from the end of the accounting period, which is 14 April 2011. If we were to use the three months from the previous instalment rule we would go to 14 May 2011. This is not allowed, so the final instalment falls on 14 April 2011.

Summary of Payments:

<i>Instalment</i>	<i>Due</i>	<i>Working</i>	<i>£</i>
1	14.11.10	£800,000 × 3/8	300,000
2	14.2.11	as above	300,000
3	14.4.11	£800,000 × 2/8	<u>200,000</u>
			<u>£800,000</u>

8.4 Group payment arrangements

Where one or more companies in a 51% group (parent with 51% subsidiaries and their 51% subsidiaries) are liable to pay tax by instalments, they may nominate a company to deal with the group payment arrangements for the group. They complete a group payment arrangements document listing all the companies who are to participate and submit it to HMRC two months before the first instalment payment is due by any group member.

“**Group**” is defined in section 59F(3) TMA 1970 as a company and all its 51 per cent subsidiaries, and their 51 per cent subsidiaries, and so on.

The application must state the start and end dates of the first period to which the arrangements are to apply. The arrangements will then apply automatically to subsequent periods of account unless and until the companies notify that they that wish to terminate it or HMRC terminate it.

TMA 1970,
s.59F
&
Revenue
Manuals

TMA 1970,
s.59F

TMA 1970,
s.59F (3)

HMRC will terminate the arrangements if:

- any of the participating companies fails to meet its obligations to pay corporation tax and file its company tax return for any chargeable accounting period;
- the nominated company breaks any of its obligations under the arrangement;
- they have reason to believe that any member of the group of companies (including those not covered by the same or any group payment arrangement) may become liable to tax under Sections 710 or 713 CTA 2010 (change in company ownership with corporation tax remaining unpaid).

Normally HMRC will only terminate the arrangements in cases where there has been a serious failure, or breach, or a pattern of non-compliance, not for minor matters.

If a group has an arrangement terminated, it will not be entitled to register a new arrangement for the next period of account.

The nominated company undertakes to pay the corporation tax liabilities of the participating companies for chargeable accounting periods falling within the periods of account covered by the arrangements (the relevant accounting periods). It is up to the nominated company to determine how much to pay and when to make payments. Payment requests or reminders will not be issued.

“Liabilities” means corporation tax and any liabilities under Section 455 CTA 2010 and Section 747 ICTA 1988 (loans to participators in close companies, and controlled foreign companies).

The arrangements apply for a “period of account” which is normally the accounting period of each of the participating companies.

Generally, the participating companies should all have chargeable accounting periods which are identical to the period of account.

However, the arrangement document also allows a company in a group to take part in a group payment arrangement if its chargeable accounting periods differ from the period of account under some circumstances. The liabilities for a chargeable accounting period of such a company can be included in an arrangement for a period of account if:

- the chargeable accounting period starts within the period of account, and ends on the same day as the nominated company's accounts; or
- the chargeable accounting period starts on or after, but ends before the end of the period of account and is followed by another (short) chargeable accounting period ending on the same day as the period of account.

This will allow newly-formed and newly-acquired companies to be included within a group payment arrangement.

It is possible to set up separate group payment arrangements for different subsets of the group. But no one company can participate in more than one group payment arrangement in respect of any one of its chargeable accounting periods.

The participating companies can change over time as companies join and leave the group.

The nominated company must remove from the group payment arrangement any participating company, other than the nominated company, which ceases to be a member of the group, or which does not have a chargeable accounting period which ends on the same day as the period of account.

HMRC can remove a company from the arrangement if it turns out never to have been a member of the group, or if the nominated company fails to fulfil its obligation to do so.

For every period of account covered by a group payment arrangement, there is a "**Closing Date**". This is the date at which the nominated company's liabilities are fixed, and after which it must say how the payments it has made are to be allocated to the individual participating companies.

The closing date is the later of:

- whichever filing date is the latest, out of all the statutory filing dates of the participating companies for returns for relevant chargeable accounting periods and;
- the day when HMRC receive the last of those returns (or make a determination of tax in the absence of a return).

The amount payable by the nominated company in respect of each relevant chargeable accounting period of the participating companies will not be affected by changes in their liability occurring after the closing date.

Therefore, adjustments made to the liability of an individual participating company (for example, in respect of interest or penalties, or as a result of an enquiry into the company's return) will be the responsibility of the individual participating company, not the nominated company.

The nominated company can claim a repayment.

This might be the case where, for example, the forecast of profits at group level has fallen as a result of the unexpected loss of business to a new competitor, or where a particularly profitable company has been sold out of the group during the relevant chargeable accounting period.

No steps will be taken before the closing date, to recover liabilities from the participating companies for relevant chargeable accounting periods.

HMRC still have the right to recover outstanding liabilities from the individual participating companies, but only **after** the closing date.

After the closing date, HMRC will send a notice of their calculation of the amount the nominated company should have paid under the arrangement and any balance outstanding or overpaid.

This calculation will be final and conclusive, and binding on the nominated company.

The nominated company then within 30 days irrevocably specifies in writing how payments made under the agreement should be apportioned amongst the participating companies. Payments to be apportioned will be net of any repayments made and of any other apportionments already made (for example to a departing company).

If the nominated company fails to make the apportionment, HMRC will make an apportionment instead in accordance with the liabilities of the participating companies as shown on their returns, to the extent that the aggregate amount paid is enough to cover those liabilities giving notice in writing to the nominated company of the apportionment. The nominated company has the right to amend this apportionment if it does so within 30 days from the date of the notice.

HMRC can reapportion payments among the participating companies if the liabilities of one or more of them remain outstanding after the nominated company's apportionment. The nominated company cannot amend such a reapportionment.

This will only be done if the nominated company's apportionment leaves an underpayment on the account of a participating company **and** HMRC cannot recover the shortfall from that company.

Payments made by the nominated company on behalf of the participating companies are deemed to have been made by those companies in the amounts finally apportioned to them and on the dates they were made by the nominated company.

Payments will be deemed to be apportioned (to the extent they have not been repaid) to the participating companies in the following order:

1. to those which have not incurred a late-filing penalty, or have only incurred a fixed-rate penalty;
2. to those which have incurred a tax-related penalty for filing a return more than 6 months late;
3. to those which have incurred a tax-related penalty either by failing to file a return, or by filing it more than 12 months late.

This ensures that a company that has filed its return late, and is therefore liable to a tax-related penalty, cannot have the amount of that penalty reduced as a result of the nominated company's apportionment.

A summary diagram of group payment arrangements can be found at the end of the chapter.

8.5 Group tax surrenders

CTA 2010,
s.963-966

This section relates to groups which have not entered into group payment arrangements.

A company that is due a refund can surrender it to a fellow group company. A group here is as for group relief. The companies must have the same chargeable accounting period and have been members of the group throughout the period from the start of the chargeable accounting period to the day the notice is given. The companies have to give joint notice in writing of the surrender, stating the name and tax reference of both companies and the type and amount of the refund surrender. The surrender can apply to the whole or part of a refund.

The recipient company is treated as having paid the amount surrendered on the later of the date it was paid or the due date of payment. The surrendering company is treated as receiving a refund on the same day. For instalment payments the tax is treated as being paid on the later of the date it was paid by the surrendering company and the due date for the first instalment.

Interest paid by the surrendering company is treated as if it had been paid by the recipient company. Payments between the companies in respect of the surrender are ignored for tax and will not be treated as distributions.

A summary diagram of group surrenders can be found at the end of the chapter.

8.6 Managed payment plans

Finance Act 2009 (now re-written to ss.59G-59H TMA 1970) provides for the introduction of Managed Payment Plans (MPPs). MPPs will be introduced from April 2011, allowing time for HMRC to make changes to their computer and accounting systems.

TMA 1970,
s.59G

TMA 1970,
s.59H

The idea is to help taxpayers with their cash flow by allowing them to spread their income or corporation tax payments equally over a period straddling the normal due dates.

The plans will be voluntary and late payments under the plan will not be liable to interest or penalties.

The plan can apply to tax payable by instalments.

Example 1

Assume we have a chargeable accounting period for the year ending on 31 July 2010.

What are the instalment dates?

Example 2

Consider a year ended 31 July 2010, with profits of £1.75 million.

Show the amount of tax due on each of the appropriate dates.

Example 3

Consider a 6 month chargeable accounting period ending on 30 June 2010, with a tax liability due of £100,000.

Calculate the amounts and due dates of the tax payable.

Answer 1

14 February 2010
 14 May 2010
 14 August 2010
 14 November 2010

Answer 2

Total tax due: £1,750,000 × 28% = £490,000

Each instalment will be:

$$£490,000 \times \frac{3}{12} \text{ths} = £122,500$$

Due on	14.2.10	£122,500
	14.5.10	£122,500
	14.8.10	£122,500
	14.11.10	£122,500

Answer 3

How many instalments? 2 of $\frac{3}{6}$ ths each

<i>Instalment</i>	<i>Due</i>		£
1	14.7.10	£100,000 × 3/6	50,000
2	14.10.10	as above	50,000
Total			<u>£100,000</u>