
STATUTORY INSTRUMENTS

1992 No. 58

**The Ports Act 1991 (Levy on
Disposals of Land, etc.) Order 1992**

ADMINISTRATION ETC.

Disposal statements

36.—(1) On or before each annual reporting date a chargeable company shall furnish to the appropriate Minister a statement (in this article referred to as a “disposal statement”), in such form as the appropriate Minister may require, in respect of the disposal period to which that annual reporting date relates.

(2) A disposal statement shall give the information specified in Schedule 3 to this Order in sufficient detail to give a true and fair view of the matters there mentioned and, in particular, shall—

- (a) as to matters of fact, be accurate and complete in all material respects; and
- (b) as to matters of opinion, be based on reasonable assumptions.

(3) A disposal statement shall be approved by the board of directors of the chargeable company and signed by two directors on behalf of the board.

(4) A disposal statement shall be accompanied by a report by the company’s auditors from time to time stating—

- (a) whether in the auditors' opinion the disposal statement has been properly prepared in accordance with this Order; and
- (b) whether they have obtained all the information and explanations which, to the best of their knowledge and belief, are necessary for the purpose of making their report.

(5) In a case to which paragraph 4(1) of Schedule 2 applies, the chargeable company shall send to the appropriate Minister with each disposal statement a valuation of the base value for each disposal in the disposal period to which the disposal statement relates (not being a disposal of land or of an interest in land acquired during the levy period); and for this purpose “base value” means the sum which, under subsection (1) (a) of section 32 of the 1979 Act as applied for the purposes of section 17 of the 1991 Act and this Order, is attributable to the land or interest in land which is the subject of the disposal: Provided that, where such a valuation has previously been sent to the Minister in connection with a part disposal of the same land or interest, the chargeable company is not required to send a further valuation.

(6) A valuation sent in pursuance of paragraph (5) above (referred to in this article as a “valuation”) shall have been made by a Fellow or an Associate of the Royal Institution of Chartered Surveyors experienced in valuing land of the same or a similar kind to that disposed of, not being a director or employee of or adviser to any member of the chargeable company’s group.

(7) A valuation shall be made in accordance with the Statements of Asset Valuation Practice and Guidance Notes (3rd edition, August 1990, as amended in April 1991 and September 1991) published by the Royal Institution of Chartered Surveyors.

(8) For the purpose of enabling the person making a valuation to make it, the chargeable company shall provide him with any earlier relevant valuation, documents or records in its possession such as are mentioned in article 39; and a valuation shall include a statement reconciling the base value

attributed by it with the value ascribed to the land or interest (or to any land or interest in land of which that land or interest in land forms or formed part) in any earlier valuation such as is there mentioned.

Assessment

- 37.**—(1) If in relation to any disposal period it appears to the appropriate Minister—
- (a) that there are gains accruing to a chargeable company in respect of which levy is chargeable and which have not been stated in a disposal statement;
 - (b) that any amount of levy or interest on unpaid levy which ought to have been stated in a disposal statement has not been so stated;
 - (c) that a disposal statement has not been furnished as required by paragraph (1) of article 36; or
 - (d) that a disposal statement does not in a material respect comply with the requirements of paragraph (2) of article 36, or that a requirement of paragraph (3), (4) or (5) of that article has not been complied with in relation to the disposal statement;

the Minister may make an assessment to the best of his judgment of the amount or further amount of levy or interest on unpaid levy which ought in his opinion to be paid by the chargeable company on or in respect of any disposal which took place or is to be regarded for the purposes of section 17 of the 1991 Act and this Order as having taken place in the disposal period or on or in respect of any disposal which took place or is for those purposes to be regarded as having taken place in an earlier disposal period and in respect of which an amount or further amount of levy has by reason of an event in the disposal period to which the disposal statement relates become payable.

(2) In making an assessment by virtue of paragraph (1) above, the Minister shall have regard to all information available to him which appears to him to be relevant for the purpose.

(3) Notice of any assessment under paragraph (1) above shall be given in writing to the chargeable company and shall state separately the amount of any levy assessed, the rate or rates at which interest has run and will continue to run on unpaid levy, and the amount of any interest payable on unpaid levy, calculated to the date of the notice.

(4) Forthwith after receiving notice of an assessment under paragraph (1) above, the company shall pay to the appropriate Minister—

- (a) the amount of the levy assessed and interest on unpaid levy to the date of payment;

less—

- (b) any amount already paid to the Minister in respect of levy on gains accruing on chargeable disposals made or to be regarded as being made in the disposal period, and any interest thereon already paid to him.

(5) If a chargeable company disputes an assessment under paragraph (1) above, article 38 shall apply for the purpose of resolving the dispute; but pending resolution of the dispute the company shall remain liable to make any payment to the appropriate Minister as if the dispute had not been so referred.

Referee

38.—(1) Where there is a dispute between a chargeable company and the appropriate Minister and this article applies for the purpose of its resolution, then if—

- (a) either party gives written notice to the other for the purposes of this sub-paragraph; and
- (b) within 30 days of the date of that notice the parties have not resolved the dispute;

either party, by written notice to the other, may require that the dispute be referred to a person to be appointed as provided in paragraph (2) below.

(2) A referee shall be an independent person with substantial recent relevant experience of the type of matter in dispute, appointed—

- (a) by agreement between the parties; or
- (b) if the parties have not agreed upon such a person within 15 days of the giving of notice under paragraph (1) above or within such extended period as the parties may agree—
 - (i) in the case of a dispute as to the valuation of land or of an interest in land or as to the apportionment of any sum attributable by way of valuation to any land or interest in land, by the President for the time being of the Royal Institution of Chartered Surveyors, or if such land or interest in land is situate in Scotland to the Chairman of the Scottish Branch of the Royal Institution of Chartered Surveyors, on the application of either party; or
 - (ii) in the case of a dispute on any other matter, by the President of the Law Society or, if the chargeable company is registered in Scotland, by the President of the Law Society of Scotland, on the application of either party;

(3) If there is a dispute as to the classification of a dispute for the purpose of sub-paragraph (b) of paragraph (2) above, that dispute as to the classification may be referred, on the application of either party, to the President of the Law Society or, if the chargeable company is registered in Scotland, to the President of the Law Society of Scotland and shall be determined by a person appointed by him, whose determination shall be binding on the parties.

(4) Where a referee is appointed pursuant to this article, he shall act as an expert, not as an arbitrator or arbiter.

(5) Within such periods as the referee may decide—

- (a) each party may make representations to him on the matters in dispute and shall give to the other party a copy of any representations so made;
- (b) may make to the referee representations on any representations made by the other party and shall give to the other party a copy of such representations.

(6) The referee may and, if so requested by either of the parties, shall hold a hearing as to the dispute; and in any such case—

- (a) the referee shall give notice to the parties of the day for the hearing (which may be adjourned from time to time, as the referee may decide);
- (b) the referee shall permit any barrister or solicitor to appear before him on behalf of either party to the dispute;
- (c) either party shall be entitled to adduce any lawful evidence,

but subject to the foregoing provisions of this paragraph the procedure at a hearing shall be determined by the referee.

(7) The referee shall notify his determination by notice in writing to both parties.

(8) The reasonable remuneration and expenses of the referee shall be payable by such one of the parties to the dispute, or by each of them in such proportions, as he may determine.

Supplementary requirements

39.—(1) In this article, “the duty period” means, in relation to a chargeable company, the levy period and any period after the levy period in which any levy or interest on unpaid levy payable by the company has not been paid.

(2) If a chargeable company is listed on, or if permission has been granted for any of its shares to be dealt in on the Unlisted Securities Market of, the London Stock Exchange, then, forthwith on the publication of every half-yearly report on the activities of the company and its subsidiaries which is required by the rules of the London Stock Exchange to be prepared by the company within the duty period, the company shall deliver a copy of that report to the appropriate Minister.

(3) A chargeable company shall deliver to the appropriate Minister—

(a) forthwith on copies being sent as provided by subsection (1) of section 238 of the Companies Act 1985⁽¹⁾, copies of—

(i) the audited individual accounts of the company for each financial year of the company which is wholly or partly within the duty period; and (ii) if at the end of any such financial year the company is a parent company for the purposes of Part VII of that Act, the audited group accounts of the company for that year or, if the company is itself an effective subsidiary of another company, then the audited group accounts of that other company for that year (or, if that other company's financial year is not the same as the chargeable company's financial year, for the most recent financial year of that company); and

(b) at the time of publication or issue, copies of all other documents which during the duty period are sent by or on behalf of the company to ordinary shareholders of the company in their capacity as such.

(4) If at any time it appears to the appropriate Minister that—

(a) a member of the chargeable company's group; or

(b) an undertaking which (not being a member of that company's group) is, within the meaning given by section 258 of the Companies Act 1985⁽²⁾, a subsidiary undertaking of such a member;

has information or any document—

(i) which relates to any transaction during the levy period affecting relevant land or a relevant interest in land or to any liability or possible liability of the chargeable company to pay levy under section 17 of the 1991 Act; and

(ii) which has not previously been furnished or delivered to him;

the Minister may by notice in writing require that person to furnish that information or, as the case may be, deliver that document to him; and that person shall promptly comply with the requirement.

(5) A member of the chargeable company's group to which any relevant land or a relevant interest in land belongs shall keep records which are sufficient to show and explain its transactions relating to relevant land or any relevant interest in land and are such as—

(a) to disclose with reasonable accuracy, at any time, the position of that member as respects such transactions; and

(b) to enable that company to ensure that every disposal statement furnished by it complies with the requirements of this Order.

(6) Records which a member of the chargeable company's group is required by paragraph (5) above to keep shall be preserved until the end of the duty period.

(7) For the purpose of enabling the appropriate Minister—

(a) to cause to be carried out a valuation of relevant land or a relevant interest in land or an inspection of relevant land or of land in which such an interest subsists; or

(1) 1985 c. 6; section 238 was inserted by the Companies Act 1989 (c. 40), section 10.

(2) Section 258 was inserted by the Companies Act 1989, section 21(1).

- (b) to cause to be carried out an inspection of the books or records of a member of the chargeable company's group relating to any relevant land or any relevant interest in land (including any chargeable disposal thereof, the computation of any gain accruing on such a disposal, or the assessment of levy on any such gain);

a member of the chargeable company's group shall, if so requested by the appropriate Minister at any time in the duty period, give to any person authorised in writing by the Minister for that purpose reasonable access at any reasonable time—

- (i) to any relevant land of that person or to any land of that person in which a relevant interest subsists; or (as the case may require)
- (ii) to any books or records of that person relating to any relevant land or any relevant interest in land owned or formerly owned by that person (including as aforesaid).

(8) A member of the chargeable company's group shall allow any person so authorised to make copies of any entries in any such books or records so far as so relating.

(9) Where property of a relevant port authority transferred under section 2 of the 1991 Act to a chargeable company includes any document containing a valuation as at or before the transfer of any land or interest in land which is relevant land or a relevant interest in land or of any land in which a relevant interest subsists, or where a member of the chargeable company's group has any other document which relates in a material way to such a valuation, the n—

- (a) the chargeable company or the other member of its group shall retain until the end of the duty period that document, and the chargeable company and every transferred 51 per cent subsidiary of the chargeable company shall so retain all other documents and records transferred by the transfer or, in the case of such a subsidiary, belonging to it at the time of the transfer which relate in a material way to the valuation; and
- (b) if the valuation or the document containing it was prepared by a person other than the chargeable company itself, the company shall take reasonable steps to obtain from the person who prepared it copies of such documents relating in a material way to the valuation as the company does not itself have and shall retain any copies so obtained until the end of the duty period.

Service of Documents

40.—(1) Any notice or other document required or authorised by this Order to be given or furnished to any other person may be given or furnished—

- (a) by delivering it to that person;
- (b) by leaving it at his proper address;
- (c) by post by means of the recorded delivery service;
- (d) by fax;
- (e) by tested telex.

(2) Any such notice or other document required or authorised to be given or furnished to a member of the chargeable company's group being a body corporate shall be duly given or furnished if it is given or furnished to the secretary or clerk of that member.

(3) For the purposes of this article and of section 7 of the Interpretation Act 1978(3) in its application to this article, the proper address of any person to whom any such notice or other document is to be given or furnished shall, in the case of the secretary or clerk of a body corporate, be that of the registered or principal office of that body and, in any other case, be the last-known address of the person to whom the document is to be given or furnished: Provided that, where the

person to whom the document is to be given or furnished has, in accordance with the arrangements agreed to in that behalf, provided an address for the giving or furnishing of the document, his proper address for the purposes of this paragraph shall be the address so provided.

Penalties

41.—(1) Where a chargeable company—

- (a) fails to furnish a disposal statement in accordance with paragraph (1) of article 36;
- (b) furnishes a disposal statement which does not give the information required by paragraph (2) of article 36 and Schedule 3 to be given by it or fails to comply with a requirement of paragraph (3), (4) or (5) of that article in relation to a disposal statement;
- (c) fails to furnish any information or deliver any document which is required by article 39 to be furnished or delivered; or
- (d) fails to comply with any other requirement of article 39,

the company shall be liable—

- (i) to a penalty not exceeding £300; and (ii)

if the failure continues after a penalty is imposed under sub-paragraph (i) above, to a further penalty or penalties not exceeding £60 for each day on which the failure continues after the day on which the penalty under sub-paragraph (i) was imposed (but excluding any day for which a penalty under this sub-paragraph has already been imposed).

(2) Where a chargeable company fraudulently or negligently furnishes any incorrect information in response to a requirement under article 36 or 39, it shall be liable to a penalty not exceeding £3,000.

(3) Proceedings for a penalty under the article shall be instituted by the appropriate Minister before the High Court or, in Scotland, before the Court of Session as the Court of Exchequer in Scotland, and any penalty imposed by the court shall be paid to the appropriate Minister.

(4) Proceedings within paragraph (3) above may not be instituted later than six years after the date on which the penalty was incurred or began to be incurred.

(5) Any proceedings within paragraph (3) above instituted in England and Wales shall be deemed to be civil proceedings by the Crown within the meaning of Part II of the Crown Proceedings Act 1947⁽⁴⁾.

(4) 1947 c. 44.