Unpaid corporation tax: third-party collection

Large Corporate | OMB



22 October 2025

We explore the circumstances in which HMRC can recover unpaid corporation tax from parties other than the company itself, including directors, shareholders and group members.

Key Points

What is the issue?

HMRC holds extensive powers to recover unpaid corporation tax not only from the defaulting company but also from directors, shareholders, group companies and related parties. These recovery provisions span areas such as capital distributions, migrations, de-grouping charges and changes in ownership.

What does it mean to me?

Individuals and businesses may face personal or group-level exposure if a company fails to meet its corporation tax obligations, even after restructuring or disposal. Transactions involving group transfers, corporate migrations or ownership changes now carry potential secondary liability risks.

What can I take away?

Understanding when HMRC can pursue third parties for unpaid tax helps manage risk and prevent unexpected exposure for directors or group members.

My article ‘Unpaid employment taxes: shifting liability’ in the September issue of *Tax Adviser* outlined HMRC’s powers to collect unpaid PAYE and NICs from employees and persons other than the employer. This article focuses on situations where HMRC can recover unpaid corporation tax from directors, shareholders, parent companies or other group members.

Gains

Capital distributions

Distributions made by a company are broadly defined in Corporation Tax Act (CTA) 2010 Part 23 Ch 2 s 1000 (categories A-H). Chapter 3 specifies what is not a distribution – most commonly, distributions made on winding up or dissolving a company.

For tax purposes:

- Individuals are liable to income tax on distributions under Income Tax (Trading & Other Income) Act (ITTOIA) 2005 Part 4 Ch 3.
- Companies are generally exempt from capital gains tax on distributions (CTA 2010 Part 9A) and are not normally liable to income tax (CTA 2009 s 3 (1)).

Under the Taxation of Chargeable Gains Act (TCGA) 1992 s 122(5)(b), a capital distribution is any distribution in money or money’s worth that is **not** liable to income tax, either because it does not constitute a distribution or because it is received by a company.

Where a capital distribution arises from the disposal of company assets generating chargeable gains, and the company fails to pay the associated corporation tax within six months of the due date, HMRC may assess the recipient shareholder (provided the shareholder is connected with the company (see TCGA 1992 s 286) within two years of that due date (TCGA 1992 s 189).

The assessment cannot exceed the value (or proportion) of the distribution received, ensuring fairness. Shareholders can recover the payment from the company, without prejudice to the deemed disposal of shares for capital gains purposes.

Gains of non-resident companies

Non-resident companies are chargeable to corporation tax on gains from specified assets. If that tax remains unpaid for six months after the due date, HMRC may recover it, by notice, under TCGA 1992 s 190(3)(b), from:

- a ‘controlling director’ of the non-resident company (or a company that controls it); or
- a person who was a controlling director in the 12 months before the disposal.

‘Control’ is determined by the rules in CTA 2010 s 450.

Recovery is restricted to tax arising on UK-situated assets connected with the company’s UK permanent establishment, or to interests in UK land or assets that derive at least 75% of their value from UK land where the company has a substantial interest in that land.

Gains of UK resident group companies

A chargeable gains group (under TCGA 1992 s 170) consists of a principal company and its 75% subsidiaries, forming 51% effective subsidiaries of the principal company for tax neutral, intra-group asset transfers.

Where a UK resident company fails to pay corporation tax more than six months after the due date on a gain that accrued while it a member of such a group, HMRC may recover the unpaid tax under TCGA 1992 s 190(3)(a), by notice to:

- the principal company at the time the gain accrued; or

- any other company which, in the 12 months before the gain accrued, owned all or part of the asset (or related asset) **and** was a group member.

For this recovery provision, the 75% subsidiary requirement is reduced to 51%, allowing HMRC to collect tax from companies outside the strict chargeable gains group, where there is a sufficient economic connection.

Procedural rules

Interest is chargeable on unpaid amounts. Any party paying tax and interest under a notice has the right to recover it from the company concerned (TCGA 1992 s 190(11)).

HMRC must issue the recovery notice within three years of the date that the company's corporation tax liability is finally determined, which depends on how that liability arises. If the company did not deliver a complete return, the three-year period begins on the date that HMRC issues a determination. If the liability is included in the corporation tax return, the date begins:

- at the end of the enquiry period;
- 30 days after a notice of amendment or enquiry closure;
- 30 days after a discovery assessment becomes payable; or
- when any related appeal is finally determined.

A recovery notice is deemed an assessment to tax. It can therefore be appealed by individuals under Taxes Management Act (TMA) 1970 Part 4 or for companies under Finance Act (FA) 1998 Sch 18 Part 5.

Any tax paid by a third party under these provisions is not deductible for tax purposes.

Intangible fixed assets: de-grouping charges

Under CTA 2009 Part 8, group relief allows tax neutral transfers of intangible fixed assets between companies with the same group. These assets include intellectual property rights, such as patents, trademarks, copy rights and design rights (CTA 2009 s 712).

A de-grouping charge applies where a company (Company A), having received an asset under group relief, leaves the group within six years of transfer (s 780 (3)). The same applies if the company leaves to join another group (s 785(4)). In such cases, Company A is treated as having realised and reacquired the asset at market value at the time of transfer – effectively triggering a deemed disposal for tax purposes.

Where Company A fails to pay the de-grouping charge within six months of the due date, HMRC can serve a notice under CTA 2009 s 795(3) requiring payment of the tax within 30 days. HMRC may issue this notice to:

- the principal company of the group at the time Company A left the group (the 'relevant time'); or
- any other company which, in the period of 12 months ending with the relevant time, was a member of that group, and owned the relevant asset (or any part of it).

For these purposes, the definition of a group is extended to include 51% subsidiaries, allowing HMRC to recover tax from a wider range of connected companies.

A non-resident company leaving the group

If Company A is non-resident, further recover provisions apply under CTA 2009 s 795(4). In such cases, a controlling director at the relevant time may be personally liable for the unpaid de-grouping charge if they were a controlling director of:

- Company A;
- a company currently controlling Company A; or
- a company that had controlled Company A at any time in the 12 months ending with the relevant time (i.e. no longer has control).

Migrating companies

Many companies becoming non-resident (a 'migrating company') will be incorporated in a foreign country. UK incorporated companies are considered UK resident unless this is overridden by a double tax treaty (known as 'treaty non-resident'). Foreign company residence is determined by common law (see *De Beers*

Consolidated Mines Ltd v Howe [1907] UKHL 626).

Non-resident companies are chargeable to corporation tax on profits from dealing or developing UK land, a trade carried on in the UK by a UK permanent establishment, and a UK property business or other UK property income.

A migrating company is deemed to dispose and reacquire all its assets at their market value immediately before migration (TCGA 1992 s 185), triggering a corporation tax charge on unrealised gains, excluding UK assets used in a trade carried on via a UK permanent establishment, which remain chargeable (TCGA 1992 s 2B).

A migrating company must notify HMRC of the following (TMA 1970 s 109B):

- its intention to cease UK residence (migration);
- the date of intended migration; and
- a statement of the tax liability it expects for the period before migration, and arrangements made for payment, including potential exit charge plans (outside the scope of this article).

The migrating company must then make those arrangements and obtain HMRC's approval.

A non-compliant company is liable for a penalty equal to the unpaid tax, including the exit charge (TMA 1970 s 109C). A director of the migrating company or the controlling company, or the controlling company itself, will also be liable for the penalty if they knowingly act or are party to acts involving an instruction (except under professional advice) that results in the migration of the company **before** satisfying the conditions listed above.

The penalty recipient has the burden of proof to show that every act of the company was without their consent or connivance.

Failure to pay tax

If a migrating company fails to pay a UK tax liability within six months of the due date – and the liability relates to a period beginning before the migration – HMRC can recover the tax from certain related parties. These include:

- another company in the same group as the migrating company, if it was part of that group at any time in the 12 months before the migration;
- a controlling director of the migrating company; or
- a controlling director of any company which controlled the migrating company during the 12 months before migration (TMA 1970 s 109E).

Note, for this purpose the definition of a ‘group’ includes companies with a 51% shareholding relationship.

HMRC must issue a recovery notice within three years of the ‘relevant time’. This is the later of:

- the date when the tax is finally determined; or
- the date that is 12 months after the end of the accounting period in which the migration occurred **and** the date the tax becomes due under any corporation tax exit charge payment plan.

If another party, such as a group company or a director, pays the tax under an HMRC notice, that payment may be recovered from the migrating company as a debt.

The meaning of tax under this rule includes, but is not limited to, various withholding taxes under s 109F, including:

- PAYE;
- Construction Industry Scheme (CIS) deductions;
- income tax deducted from interest, royalties, etc. under Income Tax Act 2007 s 964; and
- income tax deducted from non-resident sportspeople and entertainers under Income Tax Act 2007 s 966.

A change of ownership

CTA 2010 Part 14 Chapter 6 allows HMRC to recover unpaid corporation tax liabilities that remain outstanding for more than six months. This applies to accounting periods beginning before or after a change of ownership of a company (Company X).

This legislation is highly technical, so only a summary is provided here. If any of the following conditions are met – the change in ownership conditions and the trade and

business conditions are met – HMRC may assess the unpaid corporation tax directly on a ‘linked person’ (CTA 2010 s 710(2)).

This power targets avoidance arrangements, such as where Company X has outstanding tax liabilities and is divested of its trade shortly before or after a sale under prior planned arrangements. It also targets avoidance arrangements where the buyer (often non-resident) offsets the company’s tax liabilities using losses or other reliefs.

HMRC’s Company Tax Manual (CTM06520) states: ‘in practice the legislation is unlikely to be applied unless tax avoidance appears to be an issue’.

Periods beginning before the change of ownership

Change of ownership: A change of ownership occurs when any of Conditions A to C in CTA 2010 s 719 are met:

- **Condition A:** One person acquires more than 50% of the ordinary share capital.
- **Condition B:** Two or more persons each acquire at least 5% of the ordinary share capital, and together hold more than 50%.
- **Condition C:** Two or more persons acquire holdings that together amount to more than 50%, ignoring acquisitions of less than 5% unless they are additions to existing shareholdings that together amount to at least 5%.

Linked person: A linked person is someone who during the ‘relevant period’ (the three years before the change of ownership, or from on an earlier change within that period) had control of Company X; or a company that had control of Company X. ‘Control’ is defined in CTA 2010 s 707 and mirrors CTA 2010 s 450.

Trading and business conditions: The rules apply if the trading or business activities of Company X cease, or become small or negligible.

- during the relevant period or under arrangements made before the change but taking place afterwards; or
- where both the following factors apply:

1. there is a major change in the nature or conduct of a trade or business within three years before or after the change of ownership (attributable to the

relevant transfer); and
2. there is a relevant transfer of Company X's assets during that period (either before the change or afterwards under prior arrangements).

A relevant transfer must be made to a linked person (or someone connected to that person) in the relevant period, or to anyone who enables the assets (or assets representing them) to be transferred to such a linked or connected person.

Periods ending after the change of ownership

HMRC can also recover unpaid tax from a linked person, providing the 'expectation condition' is met (CTA 2010 s 713(2)). This includes cases where tax is unpaid by a company associated with Company X (that is, a company which has control of Company X, is controlled by Company X, or is under common control with Company X (CTA 2010 s 718).

The expectation condition

The expectation condition is satisfied if it would be reasonable to infer, from the transactions or circumstances surrounding the change of ownership, that at least one transaction assumed that a potential tax liability of Company X (or an associated company) would not be paid in full. A potential tax liability is one that might arise after the change of ownership, in circumstances that were reasonably foreseen when the ownership changed. (CTA 2010 s 714).

Companies not a body corporate and foreign companies

Under TMA 1970 s 108(2) and (3), HMRC may recover unpaid corporation tax from a 'proper officer' of certain types of company, specifically where it is either:

- not a body corporate – most commonly an unincorporated association, which falls within the definition of a 'company' in CTA 2010 s 1121(1); or
- a foreign company – meaning that it is not incorporated under a UK enactment or charter.

HMRC's Corporate Tax Manual CTM00510 provides further guidance on what constitutes a 'body corporate'.

The ‘proper officer’ varies depending on the company’s structure. For a body corporate, it is the company secretary, or administrator or liquidator (if one has been appointed). For other entities (including corporate bodies without such officers), it is the company treasurer.

The proper officer has a right to be reimbursed (indemnification) by the company for any amounts paid to HMRC. Where administrators are appointed to act jointly, they may notify HMRC as to which administrator is to be regarded as the proper officer for recovery purposes.

Final remarks

HMRC is under growing pressure to maximise tax collection, which may lead to greater use of its third-party recovery powers.

Transactions that could fall within the scope of these rules are often addressed in tax advice and tax-related clauses in contracts prepared by advisers. A clear understanding of these powers can help parties to manage risk and prioritise timely tax payment, reducing the likelihood of HMRC recovery action.

© Getty images