

## SCHEDULES

### SCHEDULE 10

Section 78

#### STAMP DUTY LAND TAX: RETURNS, ENQUIRIES, ASSESSMENTS AND APPEALS

#### PART 1

#### LAND TRANSACTION RETURNS

##### *Contents of return*

- 1 (1) A land transaction return must—
  - (a) be in the prescribed form,
  - (b) contain the prescribed information, and
  - (c) include a declaration by the purchaser (or each of them) that the return is to the best of his knowledge correct and complete.
- (2) In sub-paragraph (1) “prescribed” means prescribed by regulations made by the Inland Revenue.
- (3) The regulations may make different provision for different kinds of return.
- (4) Regulations under sub-paragraph (1)(b) may require the provision of information corresponding to any of the particulars formerly required under—
  - (a) Schedule 2 to the Finance Act 1931 (c. 28) (requirement to deliver particulars of land transactions in Great Britain), or
  - (b) section 244 of the Finance Act 1994 (c. 9) (corresponding provision for Northern Ireland).
- (5) The return is treated as containing any information provided by the purchaser for the purpose of completing the return.

##### *Meaning of filing date and delivery of return*

- 2 (1) References in this Part of this Act to the filing date, in relation to a land transaction return, are to the last day of the period within which the return must be delivered.
- (2) References in this Part of this Act to the delivery of a land transaction return are to the delivery of a return that—
  - (a) complies with the requirements of paragraph 1(1) (contents of return), and
  - (b) is accompanied by payment of any tax required to accompany the return.

##### *Failure to deliver return: flat-rate penalty*

- 3 (1) A person who is required to deliver a land transaction return and fails to do so by the filing date is liable to a flat-rate penalty under this paragraph.

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He may also be liable to a tax-related penalty under paragraph 4.

- (2) The penalty is—
- (a) £100 if the return is delivered within three months after the filing date, and
  - (b) £200 in any other case.

*Failure to deliver return: tax-related penalty*

- 4 (1) A purchaser who is required to deliver a land transaction return in respect of a chargeable transaction and fails to do so within twelve months after the filing date is liable to a tax-related penalty under this paragraph.

This is in addition to any flat-rate penalty under paragraph 3.

- (2) The penalty is an amount not exceeding the amount of tax chargeable in respect of the transaction.

*Formal notice to deliver return: daily penalty*

- 5 (1) If it appears to the Inland Revenue—
- (a) that a purchaser required to deliver a land transaction return in respect of a chargeable transaction has failed to do so, and
  - (b) that the filing date has now passed,
- they may issue a notice requiring him to deliver a land transaction return in respect of the transaction.

- (2) The notice must specify—
- (a) the transaction to which it relates, and
  - (b) the period for complying with the notice (which must not be less than 30 days from the date of issue of the notice).
- (3) If the purchaser does not comply with the notice within the specified period, the Inland Revenue may apply to the General or Special Commissioners for an order imposing a daily penalty.
- (4) On such an application the Commissioners may direct that the purchaser shall be liable to a penalty or penalties not exceeding £60 for each day on which the failure continues after the day on which he is notified of the direction.
- (5) This paragraph does not affect, and is not affected by, any penalty under paragraph 3 or 4 (flat-rate or tax-related penalty for failure to deliver return).

*Amendment of return by purchaser*

- 6 (1) The purchaser may amend a land transaction return given by him by notice to the Inland Revenue.
- (2) The notice must be in such form, and contain such information, as the Inland Revenue may require.
- (3) Except as otherwise provided, an amendment may not be made more than twelve months after the filing date.

*Correction of return by Revenue*

- 7 (1) The Inland Revenue may amend a land transaction return so as to correct obvious errors or omissions in the return (whether errors of principle, arithmetical mistakes or otherwise).
- (2) A correction under this paragraph is made by notice to the purchaser.
- (3) No such correction may be made more than nine months after—
- (a) the day on which the return was delivered, or
  - (b) if the correction is required in consequence of an amendment under paragraph 6, the day on which that amendment was made.
- (4) A correction under this paragraph is of no effect if the purchaser—
- (a) amends the return so as to reject the correction, or
  - (b) after the end of the period within which he may amend the return, but within three months from the date of issue of the notice of correction, gives notice rejecting the correction.
- (5) Notice under sub-paragraph (4)(b) must be given to the officer of the Board by whom notice of the correction was given.

*Penalty for incorrect or uncorrected return*

- 8 (1) A purchaser who—
- (a) fraudulently or negligently delivers in respect of a chargeable transaction a land transaction return which is incorrect, or
  - (b) discovers that a land transaction return delivered by him in respect of a chargeable transaction (neither fraudulently nor negligently) is incorrect and does not remedy the error without unreasonable delay,
- is liable to a tax-related penalty.
- (2) The penalty is an amount not exceeding the amount of tax understated, that is, the difference between—
- (a) the amount of tax chargeable in respect of the transaction, and
  - (b) the amount that would have been chargeable on the basis of the return delivered.

**PART 2****DUTY TO KEEP AND PRESERVE RECORDS***Duty to keep and preserve records*

- 9 (1) A purchaser who is required to deliver a land transaction return must—
- (a) keep such records as may be needed to enable him to deliver a correct and complete return, and
  - (b) preserve those records in accordance with this paragraph.
- (2) The records must be preserved for six years after the effective date of the transaction and until any later date on which—
- (a) an enquiry into the return is completed, or

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- (b) if there is no enquiry, the Inland Revenue no longer have power to enquire into the return.
- (3) The records required to be kept and preserved under this paragraph include—
  - (a) relevant instruments relating to the transaction, in particular, any contract or conveyance, and any supporting maps, plans or similar documents;
  - (b) records of relevant payments, receipts and financial arrangements.

*Preservation of information instead of original records*

- 10 (1) The duty under paragraph 9 to preserve records may be satisfied by the preservation of the information contained in them.
- (2) Where information is so preserved a copy of any document forming part of the records is admissible in evidence in any proceedings before the Commissioners to the same extent as the records themselves.

*Penalty for failure to keep and preserve records*

- 11 (1) A person who fails to comply with paragraph 9 in relation to a transaction is liable to a penalty not exceeding £3,000, subject to the following exception.
- (2) No penalty is incurred if the Inland Revenue are satisfied that any facts that they reasonably require to be proved, and that would have been proved by the records, are proved by other documentary evidence provided to them.

### PART 3

#### ENQUIRY INTO RETURN

*Notice of enquiry*

- 12 (1) The Inland Revenue may enquire into a land transaction return if they give notice of their intention to do so (“notice of enquiry”)—
- (a) to the purchaser,
  - (b) before the end of the enquiry period.
- (2) The enquiry period is the period of nine months—
- (a) after the filing date, if the return was delivered on or before that date;
  - (b) after the date on which the return was delivered, if the return was delivered after the filing date;
  - (c) after the date on which the amendment was made, if the return is amended under paragraph 6 (amendment by purchaser).
- (3) A return that has been the subject of one notice of enquiry may not be the subject of another, except one given in consequence of an amendment (or another amendment) of the return under paragraph 6.

*Scope of enquiry*

- 13 (1) An enquiry extends to anything contained in the return, or required to be contained in the return, that relates—

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- (a) to the question whether tax is chargeable in respect of the transaction, or
- (b) to the amount of tax so chargeable.

This is subject to the following exception.

- (2) If the notice of enquiry is given as a result of an amendment of the return under paragraph 6 (amendment by purchaser)—
  - (a) at a time when it is no longer possible to give notice of enquiry under paragraph 12, or
  - (b) after an enquiry into the return has been completed,the enquiry into the return is limited to matters to which the amendment relates or that are affected by the amendment.

*Notice to produce documents etc for purposes of enquiry*

- 14 (1) If the Inland Revenue give notice of enquiry into a land transaction return, they may by notice in writing require the purchaser—
- (a) to produce to them such documents in his possession or power, and
  - (b) to provide them with such information, in such form,
- as they may reasonably require for the purposes of the enquiry.
- (2) A notice under this paragraph (which may be given at the same time as the notice of enquiry) must specify the time (which must not be less than 30 days) within which the purchaser is to comply with it.
- (3) In complying with a notice under this paragraph copies of documents may be produced instead of originals, but—
- (a) the copies must be photographic or other facsimiles, and
  - (b) the Inland Revenue may by notice require the original to be produced for inspection.

A notice under paragraph (b) must specify the time (which must not be less than 30 days) within which the purchaser is to comply with it.

- (4) The Inland Revenue may take copies of, or make extracts from, any documents produced to them under this paragraph.
- (5) A notice under this paragraph does not oblige a purchaser to produce documents or provide information relating to the conduct of—
- (a) any pending appeal by him, or
  - (b) any pending referral to the Special Commissioners under paragraph 19 to which he is a party.

*Appeal against notice to produce documents etc*

- 15 (1) An appeal may be brought against a requirement imposed by a notice under paragraph 14 to produce documents or provide information.
- (2) Notice of appeal must be given—
- (a) in writing,
  - (b) within 30 days after the issue of the notice appealed against,
  - (c) to the officer of the Board by whom that notice was given.

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- (3) An appeal under this paragraph shall be heard and determined in the same way as an appeal against an assessment.
- (4) On an appeal under this paragraph the Commissioners—
  - (a) shall set aside the notice so far as it requires the production of documents, or the provision of information, that appears to them not reasonably required for the purposes of the enquiry, and
  - (b) shall confirm the notice so far as it requires the production or documents, or the provision of information, that appears to them reasonably required for the purposes of the enquiry.
- (5) A notice that is confirmed by the Commissioners (or so far as it is confirmed) has effect as if the period specified in it for complying was 30 days from the determination of the appeal.
- (6) The decision of the Commissioners on an appeal under this paragraph is final.

*Penalty for failure to produce documents etc*

- 16 (1) A person who fails to comply with a notice under paragraph 14 (notice to produce documents etc for purposes of enquiry) is liable—
  - (a) to a penalty of £50, and
  - (b) if the failure continues after a penalty is imposed under paragraph (a) above, to a further penalty or penalties not exceeding the amount specified in sub-paragraph (2) below for each day on which the failure continues.
- (2) The amount referred to in sub-paragraph (1)(b) is—
  - (a) £30 if the penalty is determined by an officer of the Board, and
  - (b) £150 if the penalty is determined by the court.
- (3) No penalty shall be imposed under this paragraph in respect of a failure at any time after the failure has been remedied.

*Amendment of self-assessment during enquiry to prevent loss of tax*

- 17 (1) If at a time when an enquiry is in progress into a land transaction return the Inland Revenue form the opinion—
  - (a) that the amount stated in the self-assessment contained in the return as the amount of tax payable is insufficient, and
  - (b) that unless the assessment is immediately amended there is likely to be a loss of tax to the Crown,
 they may by notice in writing to the purchaser amend the assessment to make good the deficiency.
- (2) In the case of an enquiry that under paragraph 13(2) is limited to matters arising from an amendment of the return, sub-paragraph (1) above applies only so far as the deficiency is attributable to the amendment.
- (3) For the purposes of this paragraph the period during which an enquiry is in progress is the whole of the period—
  - (a) beginning with the day on which notice of enquiry is given, and
  - (b) ending with the day on which the enquiry is completed.

*Amendment of return by taxpayer during enquiry*

- 18 (1) This paragraph applies if a return is amended under paragraph 6 (amendment by purchaser) at a time when an enquiry is in progress into the return.
- (2) The amendment does not restrict the scope of the enquiry but may be taken into account (together with any matters arising) in the enquiry.
- (3) So far as the amendment affects the amount stated in the self-assessment included in the return as the amount of tax payable, it does not take effect while the enquiry is in progress and—
- (a) if the Inland Revenue state in the closure notice that they have taken the amendments into account and that—
- (i) the amendment has been taken into account in formulating the amendments contained in the notice, or
- (ii) their conclusion is that the amendment is incorrect,
- the amendment shall not take effect;
- (b) otherwise, the amendment takes effect when the closure notice is issued.
- (4) For the purposes of this paragraph the period during which an enquiry is in progress is the whole of the period—
- (a) beginning with the day on which notice of enquiry is given, and
- (b) ending with the day on which the enquiry is completed.

*Referral of questions to Special Commissioners during enquiry*

- 19 (1) At any time when an enquiry is in progress into a land transaction return any question arising in connection with the subject-matter of the enquiry may be referred to the Special Commissioners for their determination.
- (2) Notice of referral must be given—
- (a) jointly by the purchaser and the Inland Revenue,
- (b) in writing,
- (c) to the Special Commissioners.
- (3) The notice of referral must specify the question or questions being referred.
- (4) More than one notice of referral may be given under this paragraph in relation to an enquiry.
- (5) For the purposes of this paragraph the period during which an enquiry is in progress is the whole of the period—
- (a) beginning with the day on which the notice of enquiry was given, and
- (b) ending with the day on which the enquiry is completed.

*Withdrawal of notice of referral*

- 20 (1) The Inland Revenue or the purchaser may withdraw a notice of referral under paragraph 19 by notice in accordance with this paragraph.
- (2) Notice of withdrawal must be given—
- (a) in writing,
- (b) to the other party to the referral and to the Special Commissioners,

- (c) before the first hearing by the Special Commissioners in relation to the referral.

*Effect of referral on enquiry*

- 21 (1) While proceedings on a referral under paragraph 19 are in progress in relation to an enquiry—
- (a) no closure notice shall be given in relation to the enquiry, and
  - (b) no application may be made for a direction to give such a notice.
- (2) For the purposes of this paragraph proceedings on a referral are in progress where—
- (a) notice of referral has been given,
  - (b) the notice has not been withdrawn, and
  - (c) the questions referred have not been finally determined.
- (3) For the purposes of sub-paragraph (2)(c) a question referred is finally determined when—
- (a) it has been determined by the Special Commissioners, and
  - (b) there is no further possibility of the determination being varied or set aside (disregarding any power to grant permission to appeal out of time).

*Effect of determination*

- 22 (1) The determination of a question referred to the Special Commissioners under paragraph 19 is binding on the parties to the referral in the same way, and to the same extent, as a decision on a preliminary issue in an appeal.
- (2) The determination shall be taken into account by the Inland Revenue—
- (a) in reaching their conclusions on the enquiry, and
  - (b) in formulating any amendments of the return required to give effect to those conclusions.
- (3) Any right of appeal under paragraph 35 (appeals against assessments etc) may not be exercised so as to reopen the question determined except to the extent (if any) that it could be reopened if it had been determined as a preliminary issue in that appeal.

*Completion of enquiry*

- 23 (1) An enquiry under paragraph 12 is completed when the Inland Revenue by notice (a “closure notice”) inform the purchaser that they have completed their enquiries and state their conclusions.
- (2) A closure notice must either—
- (a) state that in the opinion of the Inland Revenue no amendment of the return is required, or
  - (b) make the amendments of the return required to give effect to their conclusions.
- (3) A closure notice takes effect when it is issued.



*Direction to complete enquiry*

- 24 (1) The purchaser may apply to the General or Special Commissioners for a direction that the Inland Revenue give a closure notice within a specified period.
- (2) Any such application shall be heard and determined in the same way as an appeal.
- (3) The Commissioners hearing the application shall give a direction unless they are satisfied that the Inland Revenue have reasonable grounds for not giving a closure notice within a specified period.

**PART 4**

## REVENUE DETERMINATION IF NO RETURN DELIVERED

*Determination of tax chargeable if no return delivered*

- 25 (1) If in the case of a chargeable transaction no land transaction return is delivered by the filing date, the Inland Revenue may make a determination (a “Revenue determination”) to the best of their information and belief of the amount of tax chargeable in respect of the transaction.
- (2) Notice of the determination must be served on the purchaser, stating the date on which it is issued.
- (3) No Revenue determination may be made more than six years after the effective date of the transaction.

*Determination to have effect as a self-assessment*

- 26 (1) A Revenue determination has effect for enforcement purposes as if were a self-assessment by the purchaser.
- (2) In sub-paragraph (1) “for enforcement purposes” means for the purposes of the following provisions of this Part of this Act—
- (a) the provisions of this Schedule providing for tax-related penalties;
  - (b) section 87 (interest on unpaid tax);
  - (c) section 91 and Schedule 12 (collection and recovery of unpaid tax etc).
- (3) Nothing in this paragraph affects any liability of the purchaser to a penalty for failure to deliver a return.

*Determination superseded by actual self-assessment*

- 27 (1) If after a Revenue determination has been made the purchaser delivers a land transaction return in respect of the transaction, the self-assessment included in that return supersedes the determination.
- (2) Sub-paragraph (1) does not apply to a return delivered—
- (a) more than six years after the day on which the power to make the determination first became exercisable, or
  - (b) more than twelve months after the date of the determination,
- whichever is the later.

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- (3) Where—
- (a) proceedings have been begun for the recovery of any tax charged by a Revenue determination, and
  - (b) before the proceedings are concluded the determination is superseded by a self-assessment,
- the proceedings may be continued as if they were proceedings for the recovery of so much of the tax charged by the self-assessment as is due and payable and has not been paid.

## PART 5

### REVENUE ASSESSMENTS

#### *Assessment where loss of tax discovered*

- 28 (1) If the Inland Revenue discover as regards a chargeable transaction that—
- (a) an amount of tax that ought to have been assessed has not been assessed, or
  - (b) an assessment to tax is or has become insufficient, or
  - (c) relief has been given that is or has become excessive,
- they may make an assessment (a “discovery assessment”) in the amount or further amount that ought in their opinion to be charged in order to make good to the Crown the loss of tax.
- (2) The power to make a discovery assessment in respect of a transaction for which the purchaser has delivered a return is subject to the restrictions specified in paragraph 30.

#### *Assessment to recover excessive repayment of tax*

- 29 (1) If an amount of tax has been repaid to any person that ought not to have been repaid to him, that amount may be assessed and recovered as if it were unpaid tax.
- (2) Where the repayment was made with interest, the amount assessed and recovered may include the amount of interest that ought not to have been paid.
- (3) The power to make an assessment under this paragraph in respect of a transaction for which the purchaser has delivered a land transaction return is subject to the restrictions specified in paragraph 30.

#### *Restrictions on assessment where return delivered*

- 30 (1) If the purchaser has delivered a land transaction return in respect of the transaction in question, an assessment under paragraph 28 or 29 in respect of the transaction—
- (a) may only be made in the two cases specified in sub-paragraphs (2) and (3) below, and
  - (b) may not be made in the circumstances specified in sub-paragraph (5) below.
- (2) The first case is where the situation mentioned in paragraph 28(1) or 29(1) is attributable to fraudulent or negligent conduct on the part of—
- (a) the purchaser,

- (b) a person acting on behalf of the purchaser, or
  - (c) a person who was a partner of the purchaser at the relevant time.
- (3) The second case is where the Inland Revenue, at the time they—
- (a) ceased to be entitled to give a notice of enquiry into the return, or
  - (b) completed their enquiries into the return,
- could not have been reasonably expected, on the basis of the information made available to them before that time, to be aware of the situation mentioned in paragraph 28(1) or 29(1).
- (4) For this purpose information is regarded as made available to the Inland Revenue if—
- (a) it is contained in a land transaction return made by the purchaser,
  - (b) it is contained in any documents produced or information provided to the Inland Revenue for the purposes of an enquiry into any such return, or
  - (c) it is information the existence of which, and the relevance of which as regards the situation mentioned in paragraph 28(1) or 29(1)—
    - (i) could reasonably be expected to be inferred by the Inland Revenue from information falling within paragraphs (a) or (b) above, or
    - (ii) are notified in writing to the Inland Revenue by the purchaser or a person acting on his behalf.
- (5) No assessment may be made if—
- (a) the situation mentioned in paragraph 28(1) or 29(1) is attributable to a mistake in the return as to the basis on which the tax liability ought to have been computed, and
  - (b) the return was in fact made on the basis or in accordance with the practice generally prevailing at the time it was made.

*Time limit for assessment*

- 31 (1) The general rule is that no assessment may be made more than six years after the effective date of the transaction to which it relates.
- (2) In a case involving fraud or negligence on the part of—
- (a) the purchaser, or
  - (b) a person acting on behalf of the purchaser, or
  - (c) a person who was a partner of the purchaser at the relevant time,
- an assessment may be made up to 21 years after the effective date of the transaction to which it relates.
- (3) An assessment under paragraph 29 (assessment to recover excessive repayment of tax) is not out of time—
- (a) in a case where notice of enquiry is given into the land transaction return delivered by the person concerned, if it is made before the enquiry is completed;
  - (b) in any case, if it is made within one year after the repayment in question was made.
- (4) Where the purchaser has died—
- (a) any assessment on the personal representatives of the deceased must be made within three years after his death, and

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- (b) an assessment shall not be made by virtue of sub-paragraph (2) in respect of a transaction of which the effective date was more than six years before the death.
- (5) Any objection to the making of an assessment on the ground that the time limit for making it has expired can only be made on an appeal against the assessment.

#### *Assessment procedure*

- 32 (1) Notice of an assessment must be served on the purchaser.
- (2) The notice must state—
- (a) the tax due,
  - (b) the date on which the notice is issued, and
  - (c) the time within which any appeal against the assessment must be made.
- (3) After notice of the assessment has been served on the purchaser, the assessment may not be altered except in accordance with the express provisions of this Part of this Act.
- (4) Where an officer of the Board has decided to make an assessment to tax, and has taken all other decisions needed for arriving at the amount of the assessment, he may entrust to some other officer of the Board responsibility for completing the assessing procedure, whether by means involving the use of a computer or otherwise, including responsibility for serving notice of the assessment.

## **PART 6**

### RELIEF IN CASE OF EXCESSIVE ASSESSMENT

#### *Relief in case of double assessment*

- 33 (1) A person who believes he has been assessed to tax more than once in respect of the same matter may make a claim for relief under this paragraph.
- (2) The claim must be made by notice in writing given to the Inland Revenue.
- (3) If on a claim being made the Inland Revenue are satisfied that the person has been assessed to tax more than once in respect of the same matter, they shall amend the assessment or assessments concerned or give relief by way of discharge or repayment of tax or otherwise, to eliminate the double charge.
- (4) An appeal against a decision of the Inland Revenue on a claim for relief under this paragraph may be brought to the Commissioners having jurisdiction to hear an appeal relating to the assessment, or the later of the assessments, to which the claim relates.

#### *Relief in case of mistake in return*

- 34 (1) A person who believes he has paid tax under an assessment that was excessive by reason of some mistake in a land transaction return may make a claim for relief under this paragraph.
- (2) The claim must be made by notice in writing given to the Inland Revenue not more than six years after the effective date of the transaction.

- (3) On receiving the claim the Inland Revenue shall enquire into the matter and give by way of repayment such relief in respect of the mistake as is reasonable and just.
- (4) No relief shall be given under this paragraph—
- (a) in respect of a mistake as to the basis on which the liability of the claimant ought to have been computed when the return was in fact made on the basis or in accordance with the practice generally prevailing at the time when it was made, or
  - (b) in respect of a mistake in a claim or election included in the return.
- (5) In determining a claim under this paragraph the Inland Revenue shall have regard to all the relevant circumstances of the case.
- They shall, in particular, consider whether the granting of relief would result in amounts being excluded from charge to tax.
- (6) On an appeal against the Inland Revenue's decision on the claim, the Special Commissioners shall hear and determine the claim in accordance with the same principles as apply to the determination by the Inland Revenue of claims under this paragraph.

## PART 7

### APPEALS AGAINST REVENUE DECISIONS ON TAX

#### *Right of appeal*

- 35 (1) An appeal may be brought against—
- (a) an amendment of a self-assessment under paragraph 17 (amendment by Revenue during enquiry to prevent loss of tax),
  - (b) a conclusion stated or amendment made by a closure notice,
  - (c) a discovery assessment, or
  - (d) an assessment under paragraph 29 (assessment to recover excessive repayment).
- (2) The appeal lies to the General or Special Commissioners.
- (3) An appeal under sub-paragraph (1)(a) against an amendment of a self-assessment made while an enquiry is in progress shall not be heard and determined until the enquiry is completed.

#### *Notice of appeal*

- 36 (1) Notice of an appeal under paragraph 35 must be given—
- (a) in writing,
  - (b) within 30 days after the specified date,
  - (c) to the relevant officer of the Board.
- (2) In relation to an appeal under paragraph 35(1)(a)—
- (a) the specified date is the date on which the notice of amendment was issued, and

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- (b) the relevant officer of the Board is the officer by whom the notice of amendment was given.
- (3) In relation to an appeal under paragraph 35(1)(b)—
  - (a) the specified date is the date on which the closure notice was issued, and
  - (b) the relevant officer of the Board is the officer by whom the closure notice was given.
- (4) In relation to an appeal under paragraph 35(1)(c) or (d)—
  - (a) the specified date is the date on which the notice of assessment was issued, and
  - (b) the relevant officer of the Board is the officer by whom the notice of assessment was given.
- (5) The notice of appeal must specify the grounds of appeal.
- (6) On the hearing of the appeal the Commissioners may allow the appellant to put forward grounds not specified in the notice, and take them into consideration, if satisfied that the omission was not deliberate or unreasonable.

#### *Settling of appeals by agreement*

- 37 (1) If, before an appeal under paragraph 35 is determined, the appellant and the Inland Revenue agree that the decision appealed against—
- (a) should be upheld without variation,
  - (b) should be varied in a particular manner, or
  - (c) should be discharged or cancelled,
- the same consequences shall follow, for all purposes, as would have followed if, at the time the agreement was come to, the Commissioners had determined the appeal and had upheld the decision without variation, varied it in that manner or discharged or cancelled it, as the case may be.
- (2) Sub-paragraph (1) does not apply if, within 30 days from the date when the agreement was come to, the appellant gives notice in writing to the Inland Revenue that he wishes to withdraw from the agreement.
- (3) Where the agreement is not in writing—
- (a) sub-paragraphs (1) and (2) do not apply unless the fact that an agreement was come to, and the terms agreed, are confirmed by notice in writing given by the Inland Revenue to the appellant or by the appellant to the Inland Revenue, and
  - (b) the references in those provisions to the time when the agreement was come to shall be read as references to the time when the notice of confirmation was given.
- (4) Where—
- (a) the appellant notifies the Inland Revenue, orally or in writing, that he does not wish to proceed with the appeal, and
  - (b) the Inland Revenue do not, within 30 days after that notification, give the appellant notice in writing indicating that they are unwilling that the appeal should be withdrawn,

the provisions of sub-paragraphs (1) to (3) have effect as if, at the date of the appellant's notification, the appellant and the Inland Revenue had come to an

agreement (orally or in writing, as the case may be) that the decision under appeal should be upheld without variation.

- (5) References in this paragraph to an agreement being come to with an appellant, and to the giving of notice or notification by or to the appellant, include references to an agreement being come to, or notice or notification being given by or to, a person acting on behalf of the appellant in relation to the appeal.

#### *Recovery of tax not postponed by appeal*

- 38 (1) Where there is an appeal to the Commissioners under paragraph 35, the tax charged by the amendment or assessment in question remains due and payable as if there had been no appeal.
- (2) Sub-paragraph (1) is subject to—  
paragraph 39 (direction by Commissioners postponing payment), and  
paragraph 40 (agreement to postpone payment).

#### *Direction by Commissioners to postpone payment*

- 39 (1) If the appellant has grounds for believing that he is overcharged to tax by the decision appealed against, he may by notice in writing apply to the Commissioners for a direction that payment of an amount of tax shall be postponed pending the determination of the appeal.
- (2) The notice must—  
(a) be given to the relevant officer of the Board within 30 days after the specified date, and  
(b) state the amount by which the appellant believes himself to be overcharged to tax, and his grounds for that belief.
- (3) An application may be made more than 30 days after the specified date if there is a change in the circumstances of the case as a result of which the appellant has grounds for believing that he is overcharged to tax by the decision appealed against.
- (4) If, after any determination on such an application of the amount of tax the payment of which should be postponed, there is a change in the circumstances of the case as a result of which either party has grounds for believing that the amount so determined has become excessive or, as the case may be, insufficient, he may, by notice in writing given to the other party at any time before the determination of the appeal, apply to the Commissioners for a further determination of that amount.
- (5) An application under this paragraph shall be heard and determined by the Commissioners in the same way as an appeal.
- The fact that any such application has been heard and determined by any Commissioners does not preclude them from hearing and determining the appeal or any further application under this paragraph.
- (6) The amount of tax of which payment is to be postponed pending the determination of the appeal is the amount (if any) by which it appears to the Commissioners, having regard to the representations made and any evidence adduced, that there are reasonable grounds for believing that the appellant is overcharged.

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*Status: This is the original version (as it was originally enacted).*

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- (7) Where an application is made under this paragraph, the date on which any tax of which payment is not postponed is due and payable shall be determined as if the tax were charged by an amendment or assessment of which notice was issued on the date on which the application was determined and against which there was no appeal.
- (8) On the determination of the appeal—
- (a) the date on which any tax payable in accordance with that determination is due and payable shall, so far as it is tax the payment of which had been postponed, or which would not have been charged by the amendment or assessment if there had been no appeal, be determined as if the tax were charged by an amendment or assessment—
    - (i) of which notice was issued on the date on which the Inland Revenue issues to the appellant a notice of the total amount payable in accordance with the determination, and
    - (ii) against which there had been no appeal, and
  - (b) any tax overpaid shall be repaid.

*Agreement to postpone payment of tax*

- 40 (1) If the appellant and the relevant officer of the Board agree that payment of an amount of tax should be postponed pending the determination of the appeal, the same consequences shall follow, for all purposes, as would have followed if, at the time the agreement was come to, the Commissioners had made a direction to the same effect.

This is without prejudice to the making of a further agreement or of a further direction.

- (2) Where the agreement is not in writing—
- (a) sub-paragraph (1) does not apply unless the fact that an agreement was come to, and the terms agreed, are confirmed by notice in writing given by the relevant officer of the Board to the appellant or by the appellant to that officer, and
  - (b) the reference in that provision to the time when the agreement was come to shall be read as a reference to the time when notice of confirmation was given.
- (3) References in this paragraph to an agreement being come to with an appellant, and to the giving of notice to or by the appellant, include references to an agreement being come to, or notice being given to or by, a person acting on behalf of the appellant in relation to the appeal.