

SCHEDULES

SCHEDULE 19

Section 173.

LLOYD’S UNDERWRITERS: ASSESSMENT AND COLLECTION OF TAX

PART I

DETERMINATION OF A SYNDICATE’S PROFIT OR LOSS

Preliminary

- 1 In this Part of this Schedule “profit or loss”, in relation to a syndicate, means the aggregate amount of such of the profits or losses of all the members of the syndicate (taken together) as arise—
- (a) directly from their membership of the syndicate, or
 - (b) from assets forming part of premiums trust funds,
- and “profits” and “losses” shall be construed accordingly.

Returns by managing agent

- 2 (1) An inspector may, at any time after the end of the closing year for a year of assessment, by notice in writing to a syndicate’s managing agent require him to deliver to the inspector, on or before the final day determined under sub-paragraph (2) below, a return of the syndicate’s profit or loss for the year of assessment—
- (a) containing such information as may be required in pursuance of the notice; and
 - (b) accompanied by such accounts, statements and reports as may be so required.
- (2) The final day for the delivery of any return required by a notice under sub-paragraph (1) above is whichever is the later of—
- (a) the 1st September next following the end of the closing year for the year of assessment; and
 - (b) the end of the period of three months beginning on the day following that on which the notice was served.
- (3) If a syndicate’s managing agent, having been required by a notice under sub-paragraph (1) above to deliver a return, fails to deliver the return on or before the final date for its delivery, he shall be liable to a penalty equal to the prescribed amount multiplied by the number of days on which the failure continues.
- (4) In sub-paragraph (3) above “the prescribed amount” means £60 for each fifty members of the syndicate (counting any number of members less than fifty, and any number left over, as fifty).

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- (5) If a syndicate’s managing agent fraudulently or negligently delivers an incorrect return under sub-paragraph (1) above, he shall be liable to a penalty not exceeding £3,000 multiplied by the number of members of the syndicate.
- (6) In relation to a return required by a notice under sub-paragraph (1) above—
 - (a) any reference in sub-paragraph (2) or (3) above to the delivery of the return is a reference to its delivery together with the accompanying documents referred to in sub-paragraph (1) above; and
 - (b) the reference in sub-paragraph (5) above to the return being incorrect includes a reference to any of those documents being incorrect.

Determinations by inspector

- 3 (1) If the inspector is satisfied that a return under paragraph 2(1) above affords correct and complete information concerning the syndicate’s profit or loss for a year of assessment, he shall determine that profit or loss accordingly.
- (2) If for a year of assessment the inspector is dissatisfied with a return under paragraph 2(1) above, or there is no such return, the inspector shall determine the syndicate’s profit or loss for that year to the best of his judgment.
- (3) If the inspector discovers that a determination under sub-paragraph (1) or (2) above—
 - (a) understates the syndicate’s profits for the year of assessment; or
 - (b) overstates the syndicate’s losses for that year,
 he may, by a determination under this sub-paragraph, vary the first-mentioned determination accordingly.
- (4) Notice of a determination under this paragraph shall be served on the syndicate’s managing agent and shall state the time within which any appeal against the determination may be made under paragraph 4 below.
- (5) After notice of a determination under this paragraph has been served on the syndicate’s managing agent, the determination shall not be altered except in accordance with the express provisions of the Taxes Acts.

Appeals

- 4 (1) A syndicate’s managing agent may appeal against a determination under paragraph 3 above by a notice of appeal in writing given to the inspector within thirty days after the date of the notice of determination.
- (2) An appeal under this paragraph shall be to the General Commissioners, except that the agent may elect (in accordance with section 46(1) of the Management Act) to bring the appeal before the Special Commissioners instead of the General Commissioners.
- (3) Subsections (5) to (5E) of section 31 of the Management Act shall apply for the purposes of an election under sub-paragraph (2) above as they apply for the purposes of an election under subsection (4) of that section.

Modification of determinations pending appeal

- 5 (1) Where a syndicate’s managing agent appeals against a determination under paragraph 3 above, then, for the purpose of establishing, in the event of a member of

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the syndicate appealing against an assessment made on him, the amount of tax the payment of which should, pending the determination of that appeal, be postponed under section 55 of the Management Act, that section shall apply to the first-mentioned appeal with the modifications specified in sub-paragraph (2) below.

- (2) The modifications are as follows—
- (a) any reference to the notice of assessment shall be construed as a reference to the notice of determination;
 - (b) any reference to the appellant believing that he is overcharged to tax by the assessment shall be construed as a reference to him believing that the determination overstates the syndicate’s profits, or understates the syndicate’s losses, for the year of assessment;
 - (c) any reference to the appellant having grounds for so believing, or there being reasonable grounds for so believing, shall be construed in accordance with paragraph (b) above;
 - (d) any reference to a determination of the amount of tax the payment of which should be postponed pending the determination of the appeal shall be construed as a reference to a direction that the determination shall, pending the determination of the appeal, have effect for the purpose stated in sub-paragraph (1) above as if the syndicate’s profits there stated were reduced, or the syndicate’s losses there stated were increased, by such amount as may be specified in the direction;
 - (e) any reference to an amount of tax so determined, or to the amount of tax which should be so postponed, shall be construed in accordance with paragraph (d) above; and
 - (f) subsections (2) and (9) and, in subsection (6), paragraphs (a) and (b) and the word “and” immediately preceding paragraph (a) shall be omitted.

Apportionments of syndicate’s profit or loss

- 6 (1) Where a determination of a syndicate’s profit or loss for a year of assessment is made, varied or modified (whether under the foregoing provisions of this Schedule or on appeal), the inspector may, by notice in writing to the syndicate’s managing agent, require him to make to the inspector, within the specified period, a return apportioning, between the members of the syndicate, the syndicate’s profit or loss as stated in the determination as so made, varied or modified.
- (2) If a syndicate’s managing agent, having been required by a notice under sub-paragraph (1) above to deliver a return within the specified period, fails to deliver the return within that period, he shall be liable to a penalty equal to the prescribed amount multiplied by the number of days on which the failure continues.
- (3) In sub-paragraph (2) above “the prescribed amount” means £5 for each fifty members of the syndicate (counting any number of members less than fifty, and any number left over, as fifty).
- (4) In this paragraph “the specified period” means such period, not being less than thirty days and beginning with the day following the date of the notice under sub-paragraph (1) above, as may be specified in that notice.

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Individual members: effect of determinations

- 7 (1) A determination of a syndicate’s profit or loss for a year of assessment (whether as originally made or as varied or modified) shall, for the purpose of determining the liability to tax of each member of the syndicate, be conclusive against that member that the syndicate’s profit or loss for that year is as there stated.
- (2) Where a determination of a syndicate’s profit or loss for a year of assessment is varied or modified at any time after the issue of a notice of assessment assessing any member of the syndicate to tax—
- (a) section 31 of the Management Act (right of appeal) and section 55 of that Act (postponement of tax) shall have effect, in relation to that member, as if any reference to the date of the notice of assessment, or the date of the issue of the notice of assessment, were a reference to the date of the variation or modification; and
 - (b) in the case of a variation, an assessment which gives effect to the determination as varied shall not be out of time if it is made within one year of the date of the variation.
- (3) Sub-paragraph (2)(b) above shall not apply in the case of a variation under paragraph 3(3) above which is made later than six years after the end of the closing year.

Assessment of individual members: time limits

- 8 For the purposes of sections 36 and 40 of the Management Act (extension of time in cases of fraudulent or negligent conduct) anything done or omitted to be done by a syndicate’s managing agent shall be deemed to have been done or omitted to be done by each member of the syndicate.

PART II

PAYMENTS ON ACCOUNT OF TAX

Preliminary

- 9 In this Part of this Schedule “profit or loss”, in relation to a member and any person who is his members’ agent, means the aggregate amount of the profits or losses which, in the accounts of the syndicates of which he is a member and in relation to which that person is his members’ agent, are shown as arising to him, and “profit” and “loss” shall be construed accordingly.

Returns by members’ agent

- 10 (1) An inspector may, at any time after the end of the closing year for a year of assessment, by notice in writing to a members’ agent require him to deliver to the inspector, on or before the final day determined under sub-paragraph (4) below and as respects each member for whom he acts, a return of the member’s profit or loss for the year of assessment—
- (a) containing such information as may be required in pursuance of the notice, and
 - (b) accompanied by such statements and reports as may be so required, and

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- (c) in the case of a profit, containing a statement of the amount of tax which would be payable on that profit if income tax were payable on the whole of it at the basic rate in force for the year of assessment.
- (2) For the purposes of a return under sub-paragraph (1) above of a member’s profit, there shall be added to that profit—
- (a) any amount which in respect of the year of assessment is paid out of his special reserve fund;
 - (b) in the case of the year 1992-93, 40 per cent. of any relevant depreciation for the underwriting year 1992; and
 - (c) in the case of the year 1993-94, 15 per cent. of any relevant depreciation for the underwriting year 1993.
- (3) For the purposes of a return under sub-paragraph (1) above of a member’s profit, there may be deducted from that profit—
- (a) any amount which in respect of the year of assessment is paid into his special reserve fund;
 - (b) any of the following which is or is intended to be claimed in his return for the year as being deductible from his profit, namely—
 - (i) any amount in respect of disbursements and expenses wholly and exclusively laid out for the purposes of his underwriting business, and
 - (ii) any amount which is so deductible by virtue of section 178(1) of this Act;
 - (c) in the case of the year 1992-93, 40 per cent. of any relevant appreciation for the underwriting year 1992; and
 - (d) in the case of the year 1993-94, 15 per cent. of any relevant appreciation for the underwriting year 1993.
- (4) In sub-paragraph (2) above “relevant depreciation”, in relation to the underwriting year 1992 or 1993, means any amount representing the depreciation in value for that year of assets forming part of a premiums trust fund of the member; and in sub-paragraph (3) above “relevant appreciation” shall be construed accordingly.
- (5) The final day for the delivery of any return required by a notice under sub-paragraph (1) above is whichever is the later of—
- (a) 1st October in the year of assessment following the closing year for the year of assessment; and
 - (b) the end of the period of three months beginning on the day following that on which the notice was served.
- (6) If a members’ agent, having been required by a notice under sub-paragraph (1) above to deliver a return, fails to deliver the return on or before the final day for its delivery, he shall be liable to a penalty equal to the prescribed amount multiplied by the number of days on which the failure continues.
- (7) In sub-paragraph (6) above “the prescribed amount” means £60 for each fifty members for whom he acts and in respect of whom there is such a failure (counting any number of such members less than fifty, and any number left over, as fifty).
- (8) If a members’ agent fraudulently or negligently delivers an incorrect return under sub-paragraph (1) above, he shall be liable to a penalty not exceeding £3,000 multiplied

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by the number of members for whom he acts and in respect of whose returns there is such fraud or negligence.

- (9) In relation to a return required by a notice under sub-paragraph (1) above—
- (a) any reference in sub-paragraph (1) or (5) above to the delivery of the return is a reference to its delivery together with the accompanying documents referred to in sub-paragraph (1) above; and
 - (b) the reference in sub-paragraph (8) above to the return being incorrect includes a reference to any of those documents being incorrect.

Payments on account of tax

- 11 (1) In the case of a member's profit for a year of assessment, his members' agent shall, on or before the 1st January next following the end of the closing year for that year, pay to the collector, on account of the member's liability to tax, the amount stated in his return for that year under paragraph 10(1)(c) above.
- (2) Where an amount is paid to the collector under sub-paragraph (1) above for a year of assessment, the following provisions shall apply as between the member and his members' agent—
- (a) where the amount so paid exceeds the amount deducted by the agent in accounting to the member for the member's profit, the amount of the excess shall be paid by the member to the agent; and
 - (b) where the amount so paid is less than the amount deducted by the agent in accounting to the member for the member's profit, the amount of the excess shall be paid by the agent to the member.
- (3) Where an amount is paid to the collector under sub-paragraph (1) above for a year of assessment, the following provisions shall apply as respects the member's liability to tax for that year—
- (a) where the amount in which the member is charged to tax exceeds the amount so paid, the amount of the excess shall be the amount of tax due and payable; and
 - (b) where that amount exceeds the amount in which the member is so charged, the amount of the excess shall be treated as tax overpaid.
- (4) Any amount which is payable under sub-paragraph (1) above shall carry interest at the rate applicable under section 178 of the Finance Act 1989 from the date when it becomes payable until payment, whether or not that date is a non-business day within the meaning of the Bills of Exchange Act 1882.
- (5) Section 90 of the Management Act shall apply for the purposes of this paragraph as it applies for the purposes of any provision of Part IX of that Act.

Assessment on members' agent

- 12 (1) If a members' agent delivers a return in accordance with paragraph 10 above but does not pay to the collector in accordance with paragraph 11 above the amount of tax stated in the return, the inspector may make an assessment on the agent in that amount whether or not it has been paid when the assessment is made.
- (2) If for a year of assessment the inspector is dissatisfied with a return under paragraph 10 above, or there is no such return, he may make an assessment on the members' agent to the best of his judgment.

- (3) Any income tax due under an assessment made by virtue of sub-paragraph (1) or (2) above shall be treated for the purposes of interest on unpaid tax as having been payable at the time when it would have been payable if a correct return had been made.

PART III

REPAYMENT OF TAX DEDUCTED ETC. FROM INVESTMENT INCOME

- 13 (1) In relation to an underwriting year, a syndicate's managing agent may, by notice in writing at any time during the period of six years beginning with the 1st March next following the end of the closing year for that year, make a claim to the inspector—
- (a) for the repayment of tax suffered by way of deduction on such of the syndicate's investment income as is allocated to that year in accordance with the rules or practice of Lloyd's; or
 - (b) for the payment of the tax credit in respect of any qualifying distribution forming part of such of that income as is so allocated.
- (2) The syndicate's managing agent shall provide such information in support of the claim as the inspector may reasonably require.
- (3) Where an amount is repaid or paid to a syndicate's managing agent under this paragraph, he shall—
- (a) apportion that amount between the members of the syndicate in proportion to their interests in that part of the syndicate's investment income which has suffered tax by way of deduction or (as the case may be) that part of that income which includes the qualifying distribution; and
 - (b) except in so far as it is required to meet a share of a loss of the syndicate, pay the amount so apportioned to each member, within 90 days of the repayment, to the members' agent of that member.
- (4) The provisions of section 824 of the Taxes Act 1988 (repayment supplements: individuals and others) shall not apply to any repayment of tax made under this paragraph.
- (5) In this paragraph "investment income", in relation a syndicate, means the aggregate amount of the profits arising to all the members of the syndicate (taken together) from assets forming part of premiums trust funds.