



Finance Act 1960

1960 CHAPTER 44

PART III

INCOME TAX AND PROFITS TAX (PENALTIES AND ASSESSMENTS)

- 44 New provisions as to penalties and recovery of tax in connection with incorrect returns, etc.**
- (1) Subject to subsection (2) of this section, the following provisions of this Part of this Act shall have effect in relation to any year of assessment, or, as the case may be, chargeable accounting period, whether ending before or after the commencement of this Act; and the provisions specified in Part II of the Eighth Schedule to this Act (which relate to penalties in connection with returns, statements, declarations, lists and claims and the duty to give certain notices) shall, to the extent specified in the third column of that Part, cease to have effect.
 - (2) Nothing in this Part of this Act or the said Part II—
 - (a) shall affect any proceedings commenced before the commencement of this Act or the recovery of any penalty imposed in such proceedings ;
 - (b) shall apply in relation to anything done or omitted which is the subject of such proceedings or in respect of which any proceedings were compounded before the commencement of this Act.
- 45 Notice of liability to tax**
- (1) Every person who is chargeable to income tax for any year of assessment and who has not delivered a statement of his profits or gains or his total income for that year in accordance with the provisions of the Income Tax Acts shall, not later than one year after the end of that year of assessment, give notice that he is so chargeable.
 - (2) A notice under this section shall be given to the surveyor or, in the case of an individual who is not chargeable to income tax other than surtax, either to the surveyor or to the Special Commissioners.

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- (3) If any person fails to give a notice which he is required to give under this section he shall be liable to a penalty not exceeding one hundred pounds.

46 Penalties for failure to make certain returns, etc.

- (1) Where any person—

- (a) has been required, by a notice or precept served under or for the purposes of any of the provisions specified in the first or second column of the Sixth Schedule to this Act, to deliver any return, statement, declaration, list or other document, to furnish any particulars, to produce any document, or to make anything available for inspection, and he fails to comply with the notice or precept; or
- (b) fails to furnish any information, give any certificate or produce any document or record in accordance with any of the provisions specified in the third column of that Schedule;

he shall be liable, subject to subsection (5) of this section, to a penalty not exceeding, except in the case mentioned in subsection (2) of this section, fifty pounds and, if the failure continues after it has been declared by the court or Commissioners before whom proceedings for the penalty have been commenced, to a further penalty not exceeding ten pounds for each day on which the failure so continues.

- (2) Where the said notice was served under or for the purposes of any of the provisions specified in the first column of the said Sixth Schedule (which relate to returns and statements concerning a person's own income) and the failure continues after the end of the year of assessment following that during which the notice was served, the first of the penalties mentioned in subsection (1) of this section shall be an amount not exceeding the aggregate of fifty pounds and the total amount of the tax with which the said person is charged (whether for one or for more than one year of assessment) in assessments—
- (a) based wholly or partly on any income that ought to have been included in the return or statement required by the notice; and
 - (b) made after the end of the year next following the year of assessment in which the said notice was served.
- (3) Where in any year of assessment any amount was deducted from the said person's emoluments under section one hundred and fifty-seven (pay as you earn) of the Income Tax Act, 1952, and that amount exceeds the total amount (if any) charged in any assessments under Schedule E made on him for that year before the end of the year of assessment next following that in which the said notice was served, the amount of the excess shall be treated, for the purposes of subsection (2) of this section, as reducing the amount of the tax charged in assessments under Schedule E made on him for the first-mentioned year after the end of the said following year.
- (4) The reference in subsection (2) of this section to tax includes surtax, except that in relation to any statement required for the purposes of section one hundred and forty-four of the Income Tax Act, 1952 (which relates to partnerships) it does not include any tax not chargeable in the partnership name; and in relation to a person's failure to deliver any other return or statement it does not include tax assessed in the name of a partnership on so much of the profits or gains assessed as falls to be included in the total income of any other person.

- (5) Except in the case mentioned in subsection (2) of this section, a person shall not be liable to any penalty incurred under this section for a failure to comply with any notice or precept, if the failure is remedied before proceedings for the recovery of the penalty are commenced.
- (6) Where a person is liable to more than one penalty of an amount determined under subsection (2) of this section, any assessment taken into account for the purposes of one of those penalties shall be left out of account for the purposes of the other or others.
- (7) The preceding provisions of this section shall have effect subject to the proviso to subsection (4) of section twenty and the proviso to subsection (1) of section twenty-seven of the Income Tax Act, 1952.

47 Penalty for fraudulently or negligently making incorrect returns, etc.

- (1) Where a person fraudulently or negligently—
 - (a) delivers any incorrect return or statement of a kind mentioned in any of the provisions specified in the first column of the Sixth Schedule to this Act; or
 - (b) makes any incorrect return, statement or declaration in connection with any claim for any allowance, deduction or relief; or
 - (c) submits to the surveyor or any Commissioners any incorrect accounts in connection with the ascertainment of his liability to income tax;he shall be liable to a penalty not exceeding the aggregate of—
 - (i) fifty pounds ; and
 - (ii) the amount or, in the case of fraud, twice the amount of the difference specified in subsection (1) of section forty-eight of this Act.
- (2) Where a person fraudulently or negligently furnishes, gives, produces or makes any incorrect information, certificate, document, record or declaration of a kind mentioned in any of the provisions specified in the second or third column of the Sixth Schedule to this Act he shall be liable to a penalty not exceeding two hundred and fifty pounds, or, in the case of fraud, five hundred pounds.
- (3) Where any such return, statement, declaration or accounts as are mentioned in subsection (1) of this section were made or submitted by any person neither fraudulently nor negligently and it comes to his notice (or, if he has died, to the notice of his personal representatives) that they were incorrect, then, unless the error is remedied without unreasonable delay, the return, statement, declaration or accounts shall be treated for the purposes of this section as having been negligently made or submitted by him.

48 Provisions supplementary to section 47

- (1) The difference referred to in paragraph (ii) of subsection (1) of section forty-seven of this Act is the difference between—
 - (a) the amount of tax payable for the relevant years of assessment by the said person (including any amount deducted at source and not repayable); and
 - (b) the amount which would have been the amount so payable if the return, statement, declaration or accounts as made or submitted by him had been correct.

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- (2) The relevant years of assessment for the purposes of subsection (1) of this section are, in relation to anything delivered, made or submitted in any year of assessment, that, the next following, and any preceding year of assessment; and the references in that subsection to the amount of tax payable include surtax, except that, in relation to anything done in connection with a partnership, they do not include any tax not chargeable in the partnership name.
- (3) For the purposes of section forty-seven of this Act, any accounts submitted on behalf of any person shall be deemed to have been submitted by him unless he proves that they were submitted without his consent or connivance.

49 Penalty for failure to give information affecting investment allowances

In sub-paragraph (4) of paragraph 3 of the Second Schedule to the Finance Act, 1954 (which imposes a penalty equal to twenty pounds plus three times the amount of the investment allowance on a person failing to give information required under that paragraph) for the words " equal to twenty pounds plus three times" there shall be substituted the words " not exceeding fifty pounds plus ".

50 Assisting in making incorrect return, etc.

Any person who assists in or induces the making or delivery for any purposes of income tax of any return, accounts, statement or declaration which he knows to be incorrect shall be liable to a penalty not exceeding five hundred pounds.

51 Time limit for recovery from taxpayer of tax lost through his fault

- (1) Where, for the purpose of making good to the Crown a loss of tax wholly or partly attributable to the fraud, wilful default or neglect of any person, an assessment for any year (in this section referred to as " the normal year ") has been made on him not later than six years after the end of that year, assessments to tax for earlier years may, to the extent provided by the following provisions of this section, be made on him notwithstanding that, but for this section, they would be out of time.
- (2) No assessment under this section shall be made on any person except for the purpose of making good to the Crown a loss of tax attributable to his neglect.
- (3) An assessment under this section for any year ending not earlier than six years before the end of the normal year may be made at any time not later than the end of the year of assessment following that in which the tax covered by the assessment mentioned in subsection (1) of this section is finally determined.
- (4) An assessment under this section for any year ending earlier than six years before the end of the normal year may only be made with the leave of the General or Special Commissioners, given under the following provisions of this section.
- (5) Where an assessment for any year (in this section referred to as " the earlier year ") has been made on any person more than six years after the end of that year—
 - (a) under this section; or
 - (b) in the circumstances mentioned in subsection (6) of this section, under the proviso to subsection (1) of section forty-seven or the proviso to subsection (3) of section two hundred and twenty-nine of the Income Tax Act, 1952 (which relate to fraud or wilful default),

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and it appears to the General or Special Commissioners, on an application made to them not later than the end of the year of assessment following that in which the tax covered by the assessment for the earlier year is finally determined, that there are reasonable grounds for believing that tax for a year ending not earlier than six years before the end of the earlier year was or may have been lost to the Crown owing to the neglect of that person, they may give leave for the making on him of an assessment under this section for that year.

(6) The circumstances referred to in paragraph (b) of subsection (5) of this section are that the assessment for the earlier year was one of a number of assessments made on that person for the purpose mentioned in subsection (1) of this section and that of the years for which those assessments were made—

- (a) the latest, apart from the normal year, ended not more than six years before the end of the normal year;
- (b) the next, if any, ended not more than six years before the end of the said latest year;

and so on for any earlier years.

(7) An application for leave under this section may be made by the surveyor or any person nominated for that purpose by the Commissioners of Inland Revenue, and on any such application the person to be assessed shall be entitled to appear and be heard.

(8) In determining the amount of the tax to be charged for any year in any assessment made under this section effect shall be given, if the person to be assessed so requires, to any relief or allowance to which he would have been entitled for that year on a claim or application made within the time allowed by the Income Tax Acts.

(9) Notwithstanding anything in the preceding provisions of this section, an assessment under this section for a year ending not earlier than six years before the end of the normal year or an application for leave under this section shall not be out of time if it is made before the sixth day of April, nineteen hundred and sixty-two.

52 Modification of s. 51 in relation to partnerships

(1) The following provisions of this section shall have effect where such an assessment as is mentioned in subsection (1) of section fifty-one of this Act was made on any person who at any time carried on a trade, profession or vocation in partnership with any other person (whether the assessment was made in respect of the profits or gains thereof or not).

(2) In this section—

" the business " means the trade, profession or vocation mentioned in subsection (1) of this section;

" the normal year " has the same meaning as in section fifty-one of this Act;

" the person in default " means the person mentioned in subsection (1) of that section.

(3) Subject to subsection (5) of this section, an assessment in respect of the profits or gains of the business may be made under the said section fifty-one not only on the person in default but on any person who carried on the business at any time in the year for which the assessment is made and either—

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- (a) then carried it on in partnership with the person in default or with a person who at any time in the normal year carried it on in partnership with the person in default; or
- (b) at any time in the normal year carried on the business in partnership with the person in default;

and may be made for the purpose of making good to the Crown a loss of tax attributable to the neglect of any person who carried on the business at any time in the year for which the assessment is made.

- (4) For the purpose of determining whether leave may be given for the making of such an assessment on two or more persons who carried on the business in partnership subsections (5) and (6) of the said section fifty-one shall have effect as if the neglect referred to therein were the neglect of any of those persons and as if the assessments referred to therein were assessments made on any one of those persons.
- (5) Where such an assessment is made on two or more persons who carried on the business in partnership and those persons include any person (in this subsection referred to as "the exempted partner ") who was not charged in any such assessment as is mentioned in subsection (1) of this section, the tax charged in the assessment—
 - (a) shall not include tax on so much of the profits or gains as would fall to be included in the exempted partner's total income; and
 - (b) shall not be recoverable from the exempted partner ;

and where a person who was not charged as aforesaid carried on the business otherwise than in partnership no such assessment shall be made on him.

53 Time limit for recovery of tax lost through deceased person's fault

For the purpose of making good to the Crown any loss of tax attributable to the fraud, wilful default or neglect of a person who has died, an assessment on his personal representatives to tax for any year of assessment ending not earlier than six years before his death may be made at any time before the end of the third year next following the year of assessment in which he died.

54 Time limit for certain penalty proceedings

- (1) Where the amount of any penalty to which a person is liable under the Income Tax Acts is determined by reference to tax charged in an assessment for any year which is made not later than six years after the end of that year, proceedings for the recovery of the penalty shall not be out of time by reason that they are commenced after the time allowed by subsection (1) of section five hundred and one of the Income Tax Act, 1952, if they are commenced within three years from the final determination of the amount of that tax.
- (2) Where the said amount was finally determined before the sixth day of April, nineteen hundred and fifty-nine, the proceedings shall not be out of time if they are commenced before the sixth day of April, nineteen hundred and sixty-two.
- (3) In any proceedings for the recovery of a penalty which could not have been commenced but for this section any tax charged in an assessment made under section fifty-one or section fifty-three of this Act shall be left out of account in determining the amount of the penalty.

55 Time limit for summary proceedings, and increase of maximum fine in such proceedings

- (1) Notwithstanding anything in the Magistrates' Courts Act, 1952, the Summary Jurisdiction (Scotland) Act, 1954, or the Summary Jurisdiction Acts (Northern Ireland), proceedings for an offence under any of the following enactments (which relate to false statements and false representations) that is to say,—
 - (a) section twenty-six of the Finance Act, 1946,
 - (b) section five hundred and five of the Income Tax Act, 1952; and
 - (c) section one of the Income Tax (Repayment of Post-War Credits) Act, 1959,may be commenced at any time within three years from the time when the offence was committed.
- (2) In relation to proceedings under the said section five hundred and five, subsection (3) of section twenty-seven of the Magistrates' Courts Act, 1952, and section forty of the Summary Jurisdiction (Scotland) Act, 1954, shall have effect as if for Part in the words " twenty-five pounds" there were substituted the words " one hundred pounds ".

56 Procedure for recovery of fines and penalties

- (1) Except as otherwise provided in this section, no proceedings shall be commenced against any person for the recovery of any fine or penalty under the Income Tax Acts except by order of the Commissioners of Inland Revenue.
- (2) Any such proceedings which are not instituted (in England, Wales or Northern Ireland) under the Crown Proceedings Act, 1947, by and in the name of the Commissioners of Inland Revenue as an authorised department for the purposes of that Act shall be instituted in the name of an officer, or,—
 - (a) in England and Wales, in the name of the Attorney General;
 - (b) in Scotland, in the name of the Lord Advocate; and
 - (c) in Northern Ireland, in the name of the Attorney General for Northern Ireland.
- (3) Any such proceedings may, except as otherwise provided in the Income Tax Acts, be commenced either before the General or Special Commissioners, or—
 - (a) in England, Wales or Northern Ireland, in the High Court;
 - (b) in Scotland, in the Court of Session as the Court of Exchequer in Scotland ;and any proceedings commenced as mentioned in paragraph (a) of this subsection shall be deemed to be civil proceedings by the Crown within the meaning of Part II of the Crown Proceedings Act, 1947, or, as the case may be, that Part as for the time being in force in Northern Ireland.
- (4) The surveyor may, without an order of the Commissioners of Inland Revenue, commence before the General Commissioners (or, in Northern Ireland, the Special Commissioners) proceedings for a penalty incurred by any person under subsection (1) of section forty-six of this Act for a failure to deliver, furnish or produce anything to the surveyor; but in any proceedings so commenced the Commissioners shall not in any case award, in respect of the first of the penalties mentioned in the said subsection (1), a sum exceeding fifty pounds.
- (5) Where the person who has incurred any fine or penalty has died, any proceedings under this section which have been or could have been commenced against him may be continued or commenced against his personal representatives and any fine or penalty awarded in proceedings so continued or commenced shall be a debt due from and

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payable out of his estate; but nothing in this subsection shall extend the time for commencing proceedings against personal representatives.

- (6) Where any proceedings under this section are brought before any Commissioners, an appeal shall lie to the High Court or, in Scotland, the Court of Session as the Court of Exchequer in Scotland, from their decision—

- (a) by any party, on a question of law; and
- (b) by the defendant (or, in Scotland, the defender) against the amount of any fine or penalty awarded;

and on any appeal under paragraph (b) of this subsection the court may either confirm the decision or reduce or increase the sum awarded.

- (7) Proceedings under this section before any Commissioners shall be by way of information in writing, made to them, and upon summons issued by them to the defendant (or defender) to appear before them at a time and place stated in the summons, and they shall hear and determine each case in a summary way; and any penalty awarded by them in such proceedings shall for all purposes be treated as if it were tax charged in an assessment and due and payable.
- (8) The Commissioners or the court before whom any proceedings for a penalty of a fixed amount are brought under this section may, if they think fit, give judgment for a less amount.
- (9) The Governor of Northern Ireland may, if he thinks fit, appoint some other person to act instead of the Attorney General for Northern Ireland in relation to any matters to which this section relates, and in that case the reference in this section to the Attorney General for Northern Ireland shall be construed as a reference to the person so appointed.

57 Recovery of tax repaid in consequence of fraud or negligence

Where, in consequence of a person's fraud, wilful default or negligence, any tax has been repaid which ought not to have been repaid, the amount thereof may be charged under Case VI of Schedule D and recovered accordingly.

58 Interest on tax recovered to make good loss due to taxpayer's fault

- (1) Where an assessment is made for the purpose of making good to the Crown a loss of tax wholly or partly attributable to the fraud, wilful default or neglect of any person, the tax charged by the assessment or, as the case may be, such part thereof as corresponds to the part so attributable, shall carry interest at the rate of three per cent. per annum from the date on which the tax ought to have been paid until payment.
- (2) For the purposes of this section, the date when tax charged for any year of assessment ought to have been paid shall be taken to be the first day of January in that year, except that in the case of one-half of any tax specified in subsection (2) of section seventy-two of the Income Tax Act, 1952, it shall be taken to be the following first day of July, and in the case of surtax it shall be taken to be the following first day of January.
- (3) Tax carrying interest under this section shall not carry interest under section four hundred and ninety-five of the Income Tax Act, 1952.
- (4) Subsection (4) of the said section four hundred and ninety-five and section four hundred and ninety-six of the Income Tax Act, 1952 (which provide for the recovery,

and for the adjustment, in certain cases, of interest payable under the said section four hundred and ninety-five) shall apply in relation to interest payable under this section as they apply in relation to interest payable under that section.

- (5) A certificate by the General or Special Commissioners that the tax or a specified part of the tax charged by an assessment specified in the certificate carries interest under this section from a date so specified shall be sufficient evidence of that fact in proceedings for the recovery of that interest.
- (6) A certificate under subsection (5) of this section shall not be given except on the application of the surveyor or a person nominated for that purpose by the Commissioners of Inland Revenue, and on any such application the person charged by the assessment (or, if he has died, his personal representatives) shall be entitled to appear and be heard.
- (7) The Commissioners of Inland Revenue may at their discretion mitigate (whether before or after judgment) any interest due under this section and may stay or compound any proceedings for the recovery thereof.

59 Power of General or Special Commissioners in relation to appeals and assessments

- (1) Any penalty incurred by any person for a failure to comply with a precept under section fifty-four of the Income Tax Act, 1952, or incurred by any person under subsection (3) of section fifty-nine of that Act (which enables the General or Special Commissioners to summon witnesses) may be awarded summarily by them notwithstanding that no proceedings for its assessments, recovery have been commenced, and accordingly subsection (5) of section forty-six of this Act shall not apply to any penalty so awarded.
- (2) An appeal shall lie to the High Court or, in Scotland, the Court of Session as the Court of Exchequer in Scotland, from the award of any penalty under this section, and on any such appeal the court may either confirm or reverse the decision of the Commissioners or reduce or increase the sum awarded.
- (3) Any penalty awarded by virtue of this section shall for all purposes be treated as if it were tax charged in an assessment and due and payable.
- (4) In subsection (3) of the said section fifty-nine for the words " twenty pounds " there shall be substituted the words " fifty pounds ".

60 Evidence of income for the purposes of Part III

For the purposes of this Part of this Act, any assessment which can no longer be varied by any Commissioners on appeal or by the order of any court shall be sufficient evidence that the income in respect of which tax is charged in the assessment arose or was received as stated therein.

61 Application of Part III to the profits tax

The provisions of the Seventh Schedule to this Act shall have effect for the purpose of making with respect to the profits tax provision corresponding to the preceding provisions of this Part of this Act.

62 Application of Part III to certain regulations made with concurrence of Commissioners of Inland Revenue

In subsection (3) of section three of the National Insurance Act, 1959 (which imposes for a failure to comply with regulations made by virtue of that section the penalties provided by subsection (5) of section one hundred and fifty-seven of the Income Tax Act, 1952), for the words from the beginning to "this section " there shall be substituted the words " Sections forty-six and forty-seven of the Finance Act, 1960, shall apply in relation to regulations made by virtue of this section as they apply in relation to regulations made under section one hundred and fifty-seven of the Income Tax Act, 1952, " and for the words " so made " there shall be substituted the words " made by virtue of this section ".

63 Interpretation of Part III

(1) In this Part of this Act—

" assessment " includes additional assessment;

" neglect " means negligence or a failure to give any notice, make any return, statement or declaration, or to produce or furnish any list, document or other information required by or under the Income Tax Acts ;

" the Summary Jurisdiction Acts (Northern Ireland) " means the Summary Jurisdiction (Ireland) Acts and any Act of the Parliament of Northern Ireland for the time being in force amending those Acts ;

and references to this Part of this Act include references to the Seventh Schedule to this Act.

(2) For the purposes of this Part of this Act, a person shall be deemed not to have failed to do anything required to be done within a limited time if he did it within such further time, if any, as the Commissioners or officer concerned may have allowed; and where a person had a reasonable excuse for not doing anything required to be done he shall be deemed not to have failed to do it if he did it without unreasonable delay after the excuse had ceased.

(3) For the purposes of this Part of this Act, an assessment made in the partnership name and the tax charged in such an assessment shall, according to the law in Scotland as well as according to the law elsewhere in the United Kingdom, be deemed to be respectively an assessment made on the partners and tax charged on and payable by them.

(4) For the purposes of this Part of this Act, the amount of tax covered by any assessment shall not be deemed to be finally determined until that assessment can no longer be varied, whether by any Commissioners on appeal or by the order of any court.

(5) The references in section forty-six of this Act to the amount of tax with which a person is charged for any year of assessment and to assessments made on him include, in the case of a person who has died, references to any amount with which his personal representatives are charged for that year and to assessments made on them.