



# Finance (No. 2) Act 1975

## 1975 CHAPTER 45

### PART III

#### INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

#### CHAPTER I

#### *General*

#### **45 Payment of tax pending appeal.**

- (1) For section 55 of the Taxes Management Act 1970 (recovery of tax not in dispute) there shall be substituted—

#### **“55 Recovery of tax not postponed.**

- (1) This section applies to an appeal to the Commissioners against—
- (a) an assessment to income tax under Schedule A, Schedule C or Schedule D,
  - (b) an assessment charging income tax at a rate other than the basic rate on income from which income tax has been deducted (otherwise than under section 204 of the principal Act) or from or on which income tax is treated as having been deducted or paid or income chargeable under Schedule F,
  - (c) an assessment to income tax made under Schedule 20 to the Finance Act 1972 (income tax on company payments) other than an assessment charging tax the time for the payment of which is given by paragraph 4(1) or 9 of that Schedule,
  - (d) an assessment to capital gains tax,
  - (e) an assessment to corporation tax other than an assessment made under Schedule 14 to the Finance Act 1972 (advance corporation tax) charging tax the time for the payment of which is given by paragraph 3(1) or 9 of that Schedule.

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*Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 1975, Section 45. (See end of Document for details)*

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- (2) If no application is made under subsection (3) below, the tax charged by the assessment shall be due and payable as if it were charged by an assessment in respect of which no appeal was pending.
- (3) If the appellant has grounds for believing that he is overcharged to tax by the assessment, he may, by notice in writing given to the inspector within thirty days after the date of the issue of the notice of assessment, apply to the Commissioners for a determination of the amount of tax the payment of which should be postponed pending the determination of the appeal.

A notice of application under this subsection shall state the amount in which the appellant believes that he is overcharged to tax and his grounds for that belief.

- (4) If, after any determination of the amount of tax the payment of which should be so 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.

A notice of application under this subsection shall state the amount in which the applicant believes that the amount previously determined has become excessive or, as the case may be, insufficient and his grounds for that belief.

- (5) An application under subsection (3) or (4) above shall be heard and determined in the same way as the appeal ; and where any such application is heard and determined by any Commissioners, that shall not preclude them from hearing and determining the appeal or any application or further application under subsection (4) above.
- (6) The amount of tax the payment of which shall be postponed pending the determination of the appeal shall be the amount (if any) in which it appears to the Commissioners, having regard to the representations made and any lawful evidence adduced, that there are reasonable grounds for believing that the appellant is overcharged to tax ; and
- (a) in the case of a determination made on an application under subsection (3) above, any tax the payment of which is not so postponed shall be due and payable as if it were tax charged by an assessment notice of which was issued on the date of that determination and in respect of which no appeal was pending ; and
  - (b) in the case of a determination made on an application under subsection (4) above, any tax the payment of which ceases to be so postponed shall be due and payable as if it were tax charged by an assessment notice of which was issued on the date of that determination and in respect of which no appeal was pending, or any tax overpaid shall be repaid, as the case may require.
- (7) If the appellant and the inspector come to an agreement, whether in writing or otherwise, as to the amount of tax the payment of which should be postponed pending the determination of the appeal, the like consequences shall ensue as would have ensued if the Commissioners had made a determination to that effect under subsection (6) above on the date when the agreement was come to, but without prejudice to the making of a further agreement or of a further determination under that subsection.

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- (8) Where an agreement is not in writing—
- (a) subsection (7) above shall not apply unless the fact that an agreement was come to, and the terms agreed, are confirmed by notice in writing given by the inspector to the appellant or by the appellant to the inspector, and
  - (b) the reference in that subsection to the time when the agreement was come to shall be construed as a reference to the time of the giving of the notice of confirmation.
- (9) On the determination of the appeal—
- (a) any tax payable in accordance with that determination the payment of which had been postponed, or which had not been charged by the assessment, shall be due and payable as if it were tax charged by an assessment—
    - (i) notice of which was issued on the date on which the inspector issues to the appellant a notice of the total amount payable in accordance with the determination, and
    - (ii) in respect of which no appeal was pending, or
  - (b) any tax overpaid shall be repaid,  
as the case may require.
- (10) In this section “inspector” means the inspector or other officer of the Board by whom the notice of assessment was issued ; and references in this section to an agreement being come to with an appellant and giving of notice to or by an appellant include references to an agreement being come to with, and the giving of notice to or by, a person acting on behalf of the appellant in relation to the appeal.
- (11) Section 45(2) above shall not apply to an application under subsection (3) or (4) above ; and the transfer of proceedings under this Act from one body of Commissioners to another body of Commissioners shall not affect the validity of a determination under subsection (6) above.”
- (2) Section 55 of the said Act of 1970 as substituted by subsection (1) above shall have effect in relation to tax charged for a year or other period of assessment ending before 6th April 1973 as if for subsection (1)(b) and (c) there were substituted—
- “(b) an assessment to surtax,
  - (c) an assessment to income tax made under Schedule 9 to the principal Act (income tax on company distributions) other than an assessment charging tax the time for the payment of which is given by paragraph 2(3) of that Schedule.”
- (3) Section 56(9) (statement of case for opinion of the High Court) <sup>[F1]</sup>and section 59(6) (election for county court in Northern Ireland)] of the said Act of 1970 shall <sup>[F1]</sup>each be amended by substituting for paragraph (b) of the proviso—
- “(b) if too little tax has been charged, the amount under-charged shall be due and payable at the expiration of a period of thirty days beginning with the date on which the inspector issues to the other party a notice of the total amount payable in accordance with the order or judgment of that Court.”

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- (4) In section 48(2) of the said Act of 1970 (application to appeals and other proceedings), for the words “to the omission of section 56(9) below and to any other necessary modifications” there shall be substituted the words “to any necessary modifications, including (except in the case of applications under section 55 below) the omission of section 56(9) below”.

**Textual Amendments**

- F1** Word(s) repealed (*prosp.*) by [Finance Act 1988 \(c. 39, SIF 63:1, 2\)](#), s. 148, [Sch. 14 Pt. IX](#)

**Modifications etc. (not altering text)**

- C1** The text of ss. 44(5), 45, 46, 66, 67(2), 75(3) and Sch. 14 is in the form in which it was originally enacted: it was reproduced in Statutes in Force only in part and, except as specified, does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

**Changes to legislation:**

There are currently no known outstanding effects for the Finance (No. 2) Act 1975, Section 45.