



Taxes Management Act 1970

1970 CHAPTER 9

PART IV

ASSESSMENT AND CLAIMS

29 Assessing procedure

- (1) Except as otherwise provided, all assessments to tax shall be made by an inspector, and—
 - (a) if the inspector is satisfied that any return under the Taxes Acts affords correct and complete information concerning profits in respect of which tax is chargeable, he shall make an assessment accordingly,
 - (b) if it appears to the inspector that there are any profits in respect of which tax is chargeable and which have not been included in a return under Part II of this Act, or if the inspector is dissatisfied with any return under Part II of this Act, he may make an assessment to tax to the best of his judgment.
- (2) All assessments to surtax shall be made by the Board and—
 - (a) if they are satisfied that a return under Part II of this Act of the income of an individual affords correct and complete information concerning the whole of his income computed in accordance with the provisions of the Income Tax Acts relating to surtax, they shall make an assessment accordingly, and
 - (b) if it appears to them that there has been a failure to make a return under Part II of this Act of the income of an individual, or if they are dissatisfied with such a return, they may make an assessment to surtax to the best of their judgment.
- (3) If an inspector or the Board discover—
 - (a) that any profits which ought to have been assessed to tax have not been assessed, or
 - (b) that an assessment to tax is or has become insufficient, or
 - (c) that any relief which has been given is or has become excessive,the inspector or, as the case may be, the Board may make an assessment in the amount, or the further amount, which ought in his or their opinion to be charged.

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- (4) All income tax at the standard rate which is charged for any year on any person under subsection (3)(c) above may, notwithstanding that it was chargeable under more than one Schedule, be included in one assessment and an appeal against an assessment under subsection (3)(c) above shall be to the Commissioners to whom an appeal would lie on a claim for the relief in connection with which the assessment is made.
- (5) Notice of any assessment to tax shall be served on the person assessed and shall state the time within which any appeal against the assessment may be made.
- (6) After the notice of assessment has been served on the person assessed, the assessment shall not be altered except in accordance with the express provisions of the Taxes Acts.
- (7) Assessments to income tax at the standard rate which are under any provision in the Income Tax Acts to be made by the Board shall be made in accordance with this section, and as if in subsection (1)(a) and (b) above the references to the inspector were references to the Board.
- (8) In this section " profits "—
 - (a) in relation to income tax, means income,
 - (b) in relation to capital gains tax, means chargeable gains,
 - (c) in relation to corporation tax, means profits as computed for the purposes of that tax,and " return under Part II of this Act " includes a return under that Part as extended by section 39(3) of the principal Act (returns of income of husband and wife).

30 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 assessed to tax and recovered accordingly, and an assessment to income tax or corporation tax under this section shall be made under Case VI of Schedule D.

31 Right of appeal

- (1) An appeal may be brought against an assessment to tax by a notice of appeal in writing given within thirty days after the date of the notice of assessment.
- (2) The notice of appeal shall be given to the inspector or other officer of the Board by whom the notice of assessment was given.
- (3) The appeal shall be to the Special Commissioners if the assessment—
 - (a) is an assessment to surtax, or any other assessment made by the Board, or
 - (b) is made under section 53, 316 or 480(1) of the principal Act.
- (4) Subject to subsection (3) above the appeal shall be to the General Commissioners, except that the appellant may elect (in accordance with section 46(1) of this Act) to bring the appeal before the Special Commissioners instead of the General Commissioners.
- (5) The notice of appeal against any assessment shall specify the grounds of appeal, but on the hearing of the appeal the Commissioners may allow the appellant to put forward any ground not specified in the notice, and take it into consideration if satisfied that the omission was not wilful or unreasonable.

- (6) This section has effect subject to any express provision in the Taxes Acts, including in particular any provision under which an appeal lies to the Special Commissioners to the exclusion of the General Commissioners, any provision transferring jurisdiction to some other tribunal, and any provision making one kind of assessment conclusive in an appeal against another kind of assessment.

Relief for excessive assessments

32 Double assessment

- (1) If on a claim made to the Board it appears to their satisfaction that a person has been assessed to tax more than once for the same cause and for the same chargeable period, they shall direct the whole, or such part of any assessment as appears to be an overcharge, to be vacated, and thereupon the same shall be vacated accordingly.
- (2) An appeal on a claim under this section shall lie to any of the bodies of Commissioners having jurisdiction to hear an appeal against the assessment, or the later of the assessments, to which the claim relates.

33 Error or mistake

- (1) If any person who has paid tax charged under an assessment alleges that the assessment was excessive by reason of some error or mistake in a return, he may by notice in writing at any time not later than six years after the end of the year of assessment (or, if the assessment is to corporation tax, the end of the accounting period) in which the assessment was made, make a claim to the Board for relief.
- (2) On receiving the claim the Board shall inquire into the matter and shall, subject to the provisions of this section, give by way of repayment such relief (including, in the case of assessment to income tax at the standard rate, any consequential relief from surtax) in respect of the error or mistake as is reasonable and just:

Provided that no relief shall be given under this section in respect of an error or mistake as to the basis on which the liability of the claimant ought to have been computed where the return was in fact made on the basis or in accordance with the practice generally prevailing at the time when the return was made.

- (3) In determining the claim the Board shall have regard to all the relevant circumstances of the case, and in particular shall consider whether the granting of relief would result in the exclusion from charge to tax of any part of the profits of the claimant, and for this purpose the Board may take into consideration the liability of the claimant and assessments made on him in respect of chargeable periods other than that to which the claim relates.
- (4) If any appeal is brought from the decision of the Board on the claim the Special Commissioners shall hear and determine the appeal in accordance with the principles to be followed by the Board in determining claims under this section; and neither the appellant nor the Board shall be entitled to require a case to be stated under section 56 of this Act otherwise than on a point of law arising in connection with the computation of profits.
- (5) In this section " profits "—
- (a) in relation to income tax, means income,

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- (b) in relation to capital gains tax, means chargeable gains,
- (c) in relation to corporation tax, means profits as computed for the purposes of that tax.

Time limits

34 Ordinary time limit of six years

- (1) Subject to the following provisions of this Act, and to any other provisions of the Taxes Acts allowing a longer period in any particular class of case, an assessment to tax may be made at any time not later than six years after the end of the chargeable period to which the assessment relates.
- (2) An objection to the making of any assessment on the ground that the time limit for making it has expired shall only be made on an appeal against the assessment.

35 Emoluments received after year for which they are assessable

- (1) Where income to which this section applies is received in a year of assessment subsequent to that for which it is assessable, assessments to income tax as respects that income may be made at any time within six years after the year of assessment in which it was received.
- (2) The income to which this section applies is any income which is chargeable to tax under Schedule E, but which is not taken into account in an assessment to income tax for the year of assessment in which it is received; and for the purposes of this section—
 - (a) any sums which by virtue of Chapter II of Part VIII of the principal Act (expenses allowances, benefits and facilities for directors and others) fall to be treated as perquisites of a person's office or employment but which are not actually paid to that person shall be treated as having been received at the time when (the relevant expenses were incurred or are treated for the purposes of the said Chapter II as having been incurred,
 - (b) any payment chargeable to tax by virtue of section 187 of the principal Act (payments on retirement or loss of office or employment) shall notwithstanding anything in subsection (4) of that section (notional date of payment) be treated as having been received at the time it was actually received.

36 Fraud or wilful default

Subject to section 41 below, where any form of fraud or wilful default has been committed by or on behalf of any person in connection with or in relation to tax, assessments on that person to tax may, for the purpose of making good to the Crown any loss of tax attributable to the fraud or wilful default, be made at any time.

37 Neglect: income tax and capital gains tax

- (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,

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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, subject to section 41 below, 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) below) under section 36 above,

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 subsection (5)(b) above 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) above 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 inspector or the Board, 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 Taxes Acts.
- (9) In this section and section 38 below " tax " does not include corporation tax, and this section shall apply separately to income tax and to capital gains tax, so that the making of an assessment to one of those taxes shall not affect the time allowed for the making of an assessment to the other tax.

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

38 Modification of s. 37 in relation to partnerships

(1) The following provisions of this section shall have effect where such an assessment to tax as is mentioned in section 37(1) above 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 37 above,

" the person in default " means the person mentioned in section 37(1) above.

(3) Subject to subsection (5) of this section, an assessment in respect of the profits or gains of the business may be made under section 37 above 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—

(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 section 37 above 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.

39 Neglect: corporation tax

(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 to corporation tax for any accounting period (in this section referred to as " the normal accounting period ") has been made on him not later than six years after the end of that accounting period, assessments to corporation tax, income tax and the profits tax for earlier accounting periods, years of assessment and chargeable accounting periods 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.

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

- (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 accounting period, year of assessment or chargeable accounting period ending not earlier than six years before the end of the normal accounting period may, subject to section 41 below, be made at any time not later than one year after the time when the tax covered by the assessment mentioned in subsection (1) above is finally determined.
- (4) An assessment under this section for any accounting period, year of assessment or chargeable accounting period ending earlier than six years before the end of the normal accounting period 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 accounting period, year of assessment or chargeable accounting period (in this section referred to as " the earlier period ") has been made on any person more than six years after the end of that period—
 - (a) under this section, or
 - (b) (in the circumstances mentioned in subsection (6) below) under section 36 above,and it appears to the General or Special Commissioners, on an application made to them not later than one year after the tax covered by the assessment for the earlier period is finally determined, that there are reasonable grounds for believing that tax for an accounting period, year of assessment or chargeable accounting period ending not earlier than six years before the end of the earlier period 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 accounting period, year of assessment or chargeable accounting period.
- (6) The circumstances referred to in subsection (5)(b) above are that the assessment for the earlier period was one of a number of assessments made on that person for the purpose mentioned in subsection (1) above and that of the accounting periods, years of assessment and chargeable accounting periods for which those assessments were made—
 - (a) the latest, apart from the normal accounting period, ended not more than six years before the end of the normal accounting period,
 - (b) the next, if any, ended not more than six years before the end of the said latest accounting period, year of assessment or chargeable accounting period,and so on for any earlier accounting periods, years of assessment or chargeable accounting periods.
- (7) An application for leave under subsection (5) above may be made by the inspector or the Board, 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 accounting period, year of assessment or chargeable accounting period 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 accounting period, year of assessment or chargeable accounting period on a claim or application made within the time allowed by the Taxes Acts or the enactments relating to the profits tax, as the case may be.

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- (9) For the purposes of this section the year 1965-66 and any earlier year of assessment, and any chargeable accounting period, is to be regarded as earlier than any corporation tax accounting period.
- (10) For the purpose of making assessments to income tax for the year 1965-66 and earlier years of assessment, section 38 above shall apply in relation to this section as it applies in relation to section 37 above, but as if references in the said section 38 to the normal year were references to the normal accounting period, and with any other necessary modifications.

40 Assessment on personal representatives

- (1) For the purpose of the charge of tax on the executors or administrators of a deceased person in respect of the income, or chargeable gains, which arose or accrued to him before his death, the time allowed by section 34, 35 or 36 above shall in no case extend beyond the end of the third year next following the year of assessment in which the deceased died.
- (2) Subject to section 41 below, 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.
- (3) In this section " tax " means income tax or capital gains tax.

41 Leave of General or Special Commissioners required for certain assessments

- (1) An assessment to tax made by virtue of—
 - (a) section 36 of this Act, or
 - (b) so far as they relate to an assessment for a period ending not earlier than six years before the end of the normal year or normal accounting period, section 37, 38 or 39 of this Act, or
 - (c) section 40(2) of this Act,
 may only be made with the leave of a General or Special Commissioner given on being satisfied by an inspector or other officer of the Board that there are reasonable grounds for believing that tax has or may have been lost to the Crown owing to the fraud or wilful default or neglect of any person.
- (2) The General or Special Commissioner giving leave to make such an assessment shall take no part in the proceedings, and shall not be present, when any appeal against the assessment is heard or determined.

Claims

42 Procedure for making claims

- (1) Where any provision of the Taxes Acts provides for relief to be given, or any other thing to be done, on the making of a claim, this section shall, unless otherwise provided, have effect in relation to the claim.

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

- (2) Subject to any provision in the Taxes Acts for a claim to be made to the Board, every claim shall be made to an inspector.
- (3) An appeal may be brought against the decision of the inspector or the Board on a claim by giving written notice to the inspector or the Board as the case may be within thirty days of receipt of written notice of that decision:

Provided that the time for appealing against the Board's decision—

- (a) under section 27 of the principal Act (personal reliefs for non-residents), or
- (b) on a question of residence, ordinary residence or domicile, or
- (c) in the case of a claim under section 218 of the principal Act (pension funds for service abroad) on the question whether a fund is one to which that section applies,

shall be three months from receipt of notice of their decision.

- (4) Schedule 2 to this Act shall have effect as respects the Commissioners to whom an appeal lies under this section.
- (5) A claim shall be in such form as the Board may determine and the form of claim—
 - (a) shall provide for a declaration to the effect that all the particulars given in the form are correctly stated to the best of the knowledge and belief of the person making the claim, and
 - (b) may require—
 - (i) a return of profits to be made in support of the claim, and
 - (ii) any such particulars of assets acquired as may be required in a return by virtue of subsections (2) and (3) of section 12 of this Act,

and, in the case of a claim made by or on behalf of a person who is not resident, or who claims to be not resident or not ordinarily resident or not domiciled, in the United Kingdom, the inspector or the Board may require a statement or declaration in support of the claim to be made by affidavit.

- (6) A claim may be made on behalf of an incapacitated person by his trustee, guardian, tutor or curator; and a person who under Part VIII of this Act has been charged with tax on the profits of another person may make any such claim for relief by discharge or repayment of that tax.
- (7) The inspector or the Board may give effect to any claim by discharge of tax or, on proof to the satisfaction of the inspector or the Board that any tax has been paid by the claimant by deduction or otherwise, by repayment of tax.
- (8) Where a claim has been made and the claimant subsequently discovers that an error or mistake has been made in the claim, the claimant may make a supplementary claim within the time allowed for making the original claim.
- (9) On an appeal on a claim, the Commissioners may vary the decision appealed against whether or not the variation is to the advantage of the appellant.
- (10) Where it is necessary, in order to give effect to a claim, or as a result of allowing a claim, to make any adjustment by way of an assessment on any person, the assessment shall not be out of time if it is made within one year of the final determination of the claim.

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

For the purposes of this subsection, a claim shall not be deemed to be finally determined until the amount recoverable under the claim can no longer be varied, whether by any Commissioners on appeal or by the order of any court.

- (11) In this section " profits "—
- (a) in relation to income tax, means income,
 - (b) in relation to capital gains tax, means chargeable gains,
 - (c) in relation to corporation tax, means profits as computed for the purposes of that tax.

43 Time limit for making claims

- (1) Subject to any provision of the Taxes Acts prescribing a longer or shorter period, no claim for relief under the Taxes Acts shall be allowed unless it is made within six years from the end of the chargeable period to which it relates.
- (2) A claim (including a supplementary claim) which could not have been allowed but for the making of an assessment to income tax or capital gains tax after the year of assessment to which the claim relates may be made at any time before the end of the year of assessment following that in which the assessment was made.