

*Status: Point in time view as at 01/02/1991.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1973, SCHEDULE 16A. (See end of Document for details)*

## SCHEDULES

### [<sup>F1</sup>SCHEDULE 16A

#### UNDERWRITERS ASSESSMENT AND COLLECTION OF TAX

##### Textual Amendments

**F1** Sch. 16A inserted by Finance Act 1988 (c. 39, SIF 63:1, 2), s. 58, **Sch. 5**

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

**C1** Sch. 16A amended by S.I. 1989/421 and Finance Act 1989 (c. 26, SIF 63:1), ss. 149, 170, 178, 179, 187, **Sch. 17 Pt. VIII, Pt. X**

**C2** Sch. 16A modified by S.I. 1990/627, **regs. 1(1), 7, 10**

**C3** The text of s. 59(3)(a), Sch. 16A, Sch. 21 para. 5 and Sch. 22 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

#### *Preliminary*

- 1 In this Schedule—
- “agent”, in relation to a syndicate and a year of assessment, means—
- (a) the person who was acting as underwriting agent for that syndicate at the end of the corresponding underwriting year; or
  - (b) such other person as may be determined in accordance with regulations made by the Board by statutory instrument;
- “closing year”, in relation to a year of assessment, means the year of assessment next but one following that year;
- “inspector” includes any officer of the Board;
- “profits” includes gains;
- “syndicate” means a syndicate of underwriting members of Lloyds formed for an underwriting year;
- “syndicate profit or loss”, in relation to a syndicate, means the aggregate amount of the profits or losses arising to all the members of the syndicate (taken together), and “syndicate profits” and “syndicate losses” shall be construed accordingly.
- (2) References in this Schedule to profits or losses arising to a member of a syndicate are references to profits or losses which—
    - (a) arise to him in his capacity as such a member, whether from his underwriting business or from assets forming part of a premiums trust fund; and
    - (b) are chargeable or, as the case may be, allowable under Case I of Schedule D.
  - (3) Regulations under this paragraph may make provision with respect to the year of assessment next but one preceding the year of assessment in which they are made.

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*Returns by 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 the 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 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; and
  - (c) in the case of a syndicate profit, containing a statement of the amount of tax which would be payable on that profit if the whole of it were charged to tax at the basic rate of income tax for that year.
- (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 the 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; and in this sub-paragraph “the prescribed amount” means £10 for each fifty members of the syndicate (counting any number of members left over as fifty).
- (4) If the agent fraudulently or negligently delivers an incorrect return under sub-paragraph (1) above, he shall be liable to a penalty not exceeding the prescribed amount multiplied by the number of members of the syndicate; and in this sub-paragraph “the prescribed amount” means £500 in the case of fraud and £250 in the case of negligence.
- (5) 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 (4) above to the return being incorrect includes a reference to any of those documents being incorrect.

*Payments on account of tax*

- 3 (1) In the case of a syndicate profit for a year of assessment, the agent shall, on or before the 1st January next following the end of the closing year for that year—
- (a) pay to the collector, on account of the liabilities to tax of the members of the syndicate, the amount stated in his return for that year under paragraph 2(1)(c) above; and
  - (b) deliver to the inspector a return apportioning, between those members, the amount so paid.

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- (2) Where an amount is paid to the collector under sub-paragraph (1)(a) above for a year of assessment, the following provisions shall apply as between each member of the syndicate and the agent—
  - (a) where the member's proportion of the amount so paid exceeds the amount deducted by the agent in accounting to the member for his share of the syndicate profit for that year, the amount of the excess shall be paid by the member to the agent; and
  - (b) where the amount, so deducted exceeds that proportion, 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)(a) above for a year of assessment, the following provisions shall apply as respects the liability to tax for that year of each member of the syndicate—
  - (a) where the amount in which the member is charged to tax exceeds his proportion of the amount so paid, the amount of the excess shall be the amount of tax due and payable; and
  - (b) where that proportion 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)(a) above shall carry interest at the prescribed rate from the date when it becomes payable until payment, whether or not that date is a non-business day within the meaning of the <sup>M1</sup>Bills of Exchange Act 1882; and—
  - (a) section 89 of the <sup>M2</sup>Taxes Management Act 1970 (the prescribed rate of interest); and
  - (b) section 90 of that Act (disallowance of relief for interest on tax),shall apply for the purposes of this sub-paragraph as they apply for the purposes of any provision of Part IX of that Act.

#### Marginal Citations

**M1** 1882 c. 61.

**M2** 1970 c. 9

#### *Determinations by inspector*

- 4 (1) If the inspector is satisfied that a return under paragraph 2(1) above affords correct and complete information concerning the syndicate 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 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 profits for the year of assessment; or
  - (b) overstates the syndicate losses for that year,he may, by a determination under this sub-paragraph, vary the first-mentioned determination accordingly.

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- (4) Notice of a determination under this paragraph shall be served on the agent and shall state the time within which any appeal against the determination may be made under paragraph 5 below.
- (5) After notice of a determination under this paragraph has been served on the agent, the determination shall not be altered except in accordance with the express provisions of the Taxes Acts.

#### *Appeals*

- 5 (1) The agent may appeal against a determination under paragraph 4 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 Taxes Management Act 1970) to bring the appeal before the Special Commissioners instead of the General Commissioners; and subsections (5) to (5E) of section 31 of that Act shall apply for the purposes of an election under this sub-paragraph as they apply for the purposes of an election under subsection (4) of that section.

#### *Modification of determinations pending appeal*

- 6 (1) Where the agent appeals against a determination under paragraph 4 above, then, for the purpose of establishing, in the event of a member of 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 Taxes Management Act 1970, 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 profits, or understates the syndicate losses, for the year of assessment, and any reference to the appellant having grounds for so believing, or there being reasonable grounds for so believing, shall be construed accordingly;
  - (c) 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 profits there stated were reduced, or the syndicate losses there stated were increased, by such amount as may be specified in the direction, and any reference to an amount of tax so determined, or to the amount of tax which should be so postponed, shall be construed accordingly; and
  - (d) subsections (2) and (9) and, in subsection (6), paragraphs (a) and (b) and the word “and” immediately preceding paragraph (a) shall be omitted.

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*Apportionments of syndicate profit or loss*

- 7
- (1) Where a determination of a syndicate 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 agent, require him to make to the inspector, within the specified period, a return apportioning, between the members of the syndicate, the syndicate profit or loss as stated in the determination as so made, varied or modified.
  - (2) If the 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; and in this sub-paragraph “the prescribed amount” means £5 for each fifty members of the syndicate (counting any number of members left over as fifty).
  - (3) 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.

*Individual members: effect of determinations*

- 8
- (1) A determination of a syndicate 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 profit or loss for that year is as there stated.
  - (2) Where a determination of a syndicate 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 <sup>M3</sup>Taxes Management Act 1970 (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 4(3) above which is made later than six years after the end of the closing year.

**Marginal Citations**

**M3** 1970 c. 9

*Assessment of individual members: time limits*

- 9
- For the purposes of sections 36, 37, 40 and 41 of the <sup>M4</sup>Taxes Management Act 1970 (extension of time in cases of fraud, wilful default or neglect), anything done or omitted to be done by the agent shall be deemed to have been done or omitted to be done by each member of the syndicate.

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**Marginal Citations**

M4 1970 c. 9

*Suppleptiental: penalties*

- 10 (1) If it appears to an inspector or the Board that the agent is liable to a penalty under paragraph 2(3) or 7(2) above, the amount appearing to be due may be assessed by the inspector or the Board as if it were tax for the year of assessment in which the failure to make the return occurred; and, subject to the provisions of this paragraph, the provisions of the Taxes Management Act 1970 relating to the assessment and collection of tax shall apply accordingly.
- (2) An amount assessed by way of penalty under paragraph 2(3) or 7(2) above shall be due at the end of the period of thirty days beginning with the date of the issue of the notice of assessment.
- (3) On an appeal against an assessment of an amount by way of penalty under sub-paragraph (3) of paragraph 2 or sub-paragraph (2) of paragraph 7 above, subsections (6) to (8) of section 50 of that Act shall not apply but the Commissioner—
- (a) may confirm the amount of the assessment or, if it appears to them that the amount assessed is greater or smaller than the penalty provided for under that sub-paragraph, may reduce it or increase it to such an amount as is appropriate having regard to the provisions of that sub-paragraph; and
  - (b) if it appears to them that no penalty has been incurred, may set the assessment aside.
- (4) Where an amount has been assessed by way of penalty under sub-paragraph (3) of paragraph 2 or sub-paragraph (2) of paragraph 7 above and either no appeal has been brought against that assessment or the amount assessed has been confirmed or varied on appeal—
- (a) a certificate of an inspector or other officer of the Board that an amount is due by way of penalty under that sub-paragraph; and
  - (b) a certificate of a collector that payment of that amount has not been made to him or, to the best of his knowledge and belief, to any other collector, or to a person acting on his behalf or on behalf of another collector,
- shall be sufficient evidence that the amount mentioned in the certificates is unpaid and is due to the Crown; and any document purporting to be such a certificate as is mentioned in this sub-paragraph shall be deemed to be such a certificate unless the contrary is proved.
- (5) Section 100 of the Taxes Management Act 1970 (procedure for recovery of penalties) shall not apply to a penalty under paragraph 2(3) or 7(2) above.

*Supplemental: interest*

- 11 (1) Interest charged under paragraph 3(4) above shall be treated for the purposes of the enactments mentioned in section 69 of the Taxes Management Act 1970 (interest on tax) as if it were tax charged and due and payable under an assessment.

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- (2) References to section 86 of that Act in sections 70(2) and 92 of that Act (evidence, and remission of interest in certain cases) shall include a reference to paragraph 3(4) above.]

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