



# Finance Act 1989

## 1989 CHAPTER 26

### PART II

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

#### CHAPTER IV

#### MANAGEMENT

*Assessments, claims etc.*

#### **149 Assessments founded on fraudulent or negligent conduct**

- (1) The following section shall be substituted for section 36 of the Taxes Management Act 1970—

#### **“36 Fraudulent or negligent conduct**

- (1) An assessment on any person (in this section referred to as “the person in default”) for the purpose of making good to the Crown a loss of tax attributable to his fraudulent or negligent conduct or the fraudulent or negligent conduct of a person acting on his behalf may be made at any time not later than twenty years after the end of the chargeable period to which the assessment relates.
- (2) Where the person in default is an individual who carried on a trade or profession in partnership with another individual, or with other persons at least one of whom is an individual, at any time in the year for which the assessment is made, an assessment in respect of the profits or gains of the trade or profession for the purpose mentioned in subsection (1) above may be made not only on the person in default but also on his partner or, as the case may be, on any of his partners who is an individual.

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- (3) If the person on whom the assessment is made so requires, in determining the amount of the tax to be charged for any chargeable period in any assessment made for the purpose mentioned in subsection (1) above, effect shall be given to any relief or allowance to which he would have been entitled for that chargeable period on a claim or application made within the time allowed by the Taxes Acts.”
- (2) Sections 37 to 39 (special provisions as to “neglect”) and section 41 (leave required for certain assessments) of the Taxes Management Act 1970 shall cease to have effect.
- (3) The words “section 36” shall be substituted—
- (a) for the words “sections 36, 37 and 39” in section 30(6) of the Taxes Management Act 1970 (tax repaid in error etc.),
  - (b) for the words “sections 37 to 39” in section 118(3) of that Act (effect under law of Scotland of assessment in partnership name),
  - (c) for the words “sections 36 and 39” in paragraph 10(1) of Schedule 13 to the Taxes Act 1988 (assessments to advance corporation tax), and
  - (d) for the words “sections 36 and 37” in paragraph 10(1) of Schedule 16 to that Act (assessments to income tax on company payments which are not distributions).
- (4) The words “fraudulent or negligent conduct” shall be substituted—
- (a) for the words “fraud, wilful default or neglect” in—
    - (i) section 37A of the Taxes Management Act 1970 (married couples),
    - (ii) section 40(2) of that Act (assessment on personal representatives), and
    - (iii) paragraph 9 of Schedule 16A to the Finance Act 1973 and of Schedule 19A to the Taxes Act 1988 (Lloyd’s), and
  - (b) for the words “fraud and wilful default) and section 37 of that Act (neglect” in section 307(5) of the Taxes Act 1988 (assessments for withdrawing relief under Chapter III of Part VII of that Act).
- (5) In section 105 of the Taxes Management Act 1970 (admissibility of evidence), for the words “fraud or default” and the words “fraud or wilful default” there shall be substituted the words “fraudulent conduct”.
- (6) In paragraph 9 of Schedule 16A to the Finance Act 1973 and of Schedule 19A to the Taxes Act 1988, for “37, 40 and 41” there shall be substituted “and 40”.
- (7) Nothing in this section shall affect the making of assessments—
- (a) for years of assessment before the year 1983-84, or
  - (b) for accounting periods which ended before 1st April 1983.

## **150 Further assessments: claims etc**

- (1) The following sections shall be inserted after section 43 of the Taxes Management Act 1970—

### **“43A Further assessments: claims etc**

- (1) This section applies where—

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- (a) by virtue of section 29(3) of this Act an assessment is made on any person for a chargeable period, and
  - (b) the assessment is not made for the purpose of making good to the Crown any loss of tax attributable to his fraudulent or negligent conduct or the fraudulent or negligent conduct of a person acting on his behalf.
- (2) Without prejudice to section 43(2) above but subject to section 43B below, where this section applies—
  - (a) any relevant claim, election, application or notice which could have been made or given within the time allowed by the Taxes Acts may be made or given at any time within one year from the end of the chargeable period in which the assessment is made, and
  - (b) any relevant claim, election, application or notice previously made or given may at any such time be revoked or varied—
    - (i) in the same manner as it was made or given, and
    - (ii) by or with the consent of the same person or persons who made, gave or consented to it (or, in the case of any such person who has died, by or with the consent of his personal representatives),except where by virtue of any enactment it is irrevocable.
- (3) For the purposes of this section and section 43B below, a claim, election, application or notice is relevant in relation to an assessment for a chargeable period if—
  - (a) it relates to that chargeable period or is made or given by reference to an event occurring in that chargeable period, and
  - (b) it or, as the case may be, its revocation or variation has or could have the effect of reducing any of the liabilities mentioned in subsection (4) below.
- (4) The liabilities referred to in subsection (3) above are—
  - (a) the increased liability to tax resulting from the assessment,
  - (b) any other liability to tax of the person concerned for—
    - (i) the chargeable period to which the assessment relates, or
    - (ii) any chargeable period which follows that chargeable period and ends not later than one year after the end of the chargeable period in which the assessment is made.
- (5) Where a claim, election, application or notice is made, given, revoked or varied by virtue of subsection (2) above, all such adjustments shall be made, whether by way of discharge or repayment of tax or the making of assessments or otherwise, as are required to take account of the effect of the taking of that action on any person's liability to tax for any chargeable period.
- (6) The provisions of this Act relating to appeals against decisions on claims shall apply with any necessary modifications to a decision on the revocation or variation of a claim by virtue of subsection (2) above.

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### **43B Limits on application of section 43A**

- (1) If the effect of the exercise by any person of a power conferred by section 43A(2) above—
- (a) to make or give a claim, election, application or notice, or
  - (b) to revoke or vary a claim, election, application or notice previously made or given,
- would be to alter the liability to tax of another person, that power may not be exercised except with the consent in writing of that other person or, where he has died, his personal representatives.
- (2) Where—
- (a) a power conferred by subsection (2) of section 43A above is exercised in consequence of an assessment made on a person, and
  - (b) the exercise of the power increases the liability to tax of another person,
- that section shall not apply by reason of any assessment made because of that increased liability.
- (3) In any case where—
- (a) one or more relevant claims, elections, applications or notices are made, given, revoked or varied by virtue of the application of section 43A above in the case of an assessment, and
  - (b) the total of the reductions in liability to tax which, apart from this subsection, would result from the action mentioned in paragraph (a) above would exceed the additional liability to tax resulting from the assessment,
- the excess shall not be available to reduce any liability to tax.
- (4) Where subsection (3) above has the effect of limiting either the reduction in a person's liability to tax for more than one period or the reduction in the liability to tax of more than one person, the limited amount shall be apportioned between the periods or persons concerned—
- (a) except where paragraph (b) below applies, in such manner as may be specified by the inspector by notice in writing to the person or persons concerned, or
  - (b) where the person concerned gives (or the persons concerned jointly give) notice in writing to the inspector within the relevant period, in such manner as may be specified in the notice given by the person or persons concerned.
- (5) For the purposes of paragraph (b) of subsection (4) above the relevant period is the period of 30 days beginning with the day on which notice under paragraph (a) of that subsection is given to the person concerned or, where more than one person is concerned, the latest date on which such notice is given to any of them.”
- (2) This section shall apply in relation to any assessment notice of which is issued on or after the day on which this Act is passed.

## **151 Assessment of trustees etc**

- (1) Income tax chargeable in respect of income arising to the trustees of a settlement, or to the personal representatives of a deceased person, may be assessed and charged on and in the name of any one or more of the relevant trustees or, as the case may be, the relevant personal representatives.
- (2) In this section “the relevant trustees”, in relation to any income, means the trustees to whom the income arises and any subsequent trustees of the settlement, and “the relevant personal representatives” has a corresponding meaning.
- (3) In this section “personal representatives” has the same meaning as in section 111 of this Act.
- (4) This section shall be deemed always to have had effect.