

## SCHEDULES

### SCHEDULE 29

#### AMENDMENTS TO MACHINERY OF SELF-ASSESSMENT

##### PART 3

##### REFERRAL OF QUESTIONS DURING ENQUIRY

##### *Enquiry into personal, trustee or partnership return*

- 6 (1) After Part 3 of the Taxes Management Act 1970 insert—

##### “PART 3A

##### REFERRAL OF QUESTIONS DURING ENQUIRY

##### **28ZA Referral of questions during enquiry**

- (1) At any time when an enquiry is in progress under section 9A(1) or 12AC(1) of this Act, any question arising in connection with the subject-matter of the enquiry may be referred to the Special Commissioners for their determination.
- (2) Notice of referral must be given—
  - (a) jointly by the taxpayer and an officer of the Board,
  - (b) in writing,
  - (c) to the Special Commissioners.
- (3) The notice of referral must specify the question or questions being referred.
- (4) More than one notice of referral may be given under this section in relation to an enquiry.
- (5) For the purposes of this section the period during which an enquiry is in progress is the whole of the period—
  - (a) beginning with the day on which notice of enquiry is given, and
  - (b) ending with the day on which the enquiry is completed.
- (6) In this section “the taxpayer” means—
  - (a) in relation to an enquiry under section 9A(1) of this Act, the person to whom the notice of enquiry was given;
  - (b) in relation to an enquiry under section 12AC(1) of this Act, the person to whom the notice of enquiry was given or his successor.

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*Status: This is the original version (as it was originally enacted).*

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### **28ZB Withdrawal of notice of referral**

- (1) Either party may withdraw a notice of referral under section 28ZA of this Act by notice in accordance with this section.
- (2) Notice of withdrawal must be given—
  - (a) in writing,
  - (b) to the other party to the referral and to the Special Commissioners,
  - (c) before the first hearing by the Special Commissioners in relation to the referral.

### **28ZC Regulations with respect to referrals**

- (1) The Lord Chancellor may make provision by regulations with respect to referrals to the Special Commissioners under—
  - (a) section 28ZA of this Act, or
  - (b) paragraph 31A of Schedule 18 to the Finance Act 1998.
- (2) Regulations under subsection (1) above may, in particular—
  - (a) make provision with respect to any of the matters dealt with in the following provisions of this Act—
    - (i) section 50 (procedure before the Special Commissioners),
    - (ii) section 56 (statement of case for opinion of the High Court),
    - (iii) section 56A (appeals from the Special Commissioners), and
    - (iv) section 58 (proceedings in Northern Ireland), or
  - (b) provide for any of those provisions to apply, with such modifications as may be specified in the regulations, in relation to a referral to the Special Commissioners under the provisions mentioned in subsection (1) above.
- (3) Regulations under subsection (1) above may—
  - (a) make different provision for different cases or different circumstances, and
  - (b) contain such supplementary, incidental, consequential and transitional provision as the Lord Chancellor thinks appropriate.
- (4) Regulations under subsection (1) above shall—
  - (a) be made by statutory instrument, and
  - (b) be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) In the following provisions any reference to an appeal includes a reference to a referral under section 28ZA of this Act or paragraph 31A of Schedule 18 to the Finance Act 1998—
  - (a) sections 56B, 56C and 56D of this Act (power of the Lord Chancellor to make regulations about the practice and procedure to be followed in connection with appeals to the Special Commissioners); and
  - (b) section 57 of this Act (power of the Board to make regulations about appeals relating to chargeable gains).

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

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- (6) Any regulations under section 56B or 57 of this Act which are in force immediately before the commencement of subsection (1) above shall apply in relation to referrals under section 28ZA of this Act or paragraph 31A of Schedule 18 to the Finance Act 1998, subject to any necessary modifications, as they apply in relation to appeals to the Special Commissioners.
- (7) Regulations under this section relating to proceedings in Scotland shall not be made except with the consent of the Scottish Ministers.

#### **28ZD Effect of referral on enquiry**

- (1) While proceedings on a referral under section 28ZA of this Act are in progress in relation to an enquiry—
  - (a) no closure notice shall be given in relation to the enquiry, and
  - (b) no application may be made for a direction to give such a notice.
- (2) For the purposes of this section proceedings on a referral are in progress where—
  - (a) notice of referral has been given,
  - (b) the notice has not been withdrawn, and
  - (c) the questions referred have not been finally determined.
- (3) For the purposes of subsection (2)(c) above a question referred is finally determined when—
  - (a) it has been determined by the Special Commissioners, and
  - (b) there is no further possibility of that determination being varied or set aside (disregarding any power to give permission to appeal out of time).

#### **28ZE Effect of determination**

- (1) The determination of a question referred to the Special Commissioners under section 28ZA of this Act is binding on the parties to the referral in the same way, and to the same extent, as a decision on a preliminary issue in an appeal.
  - (2) The determination shall be taken into account by an officer of the Board—
    - (a) in reaching his conclusions on the enquiry, and
    - (b) in formulating any amendments of the return required to give effect to those conclusions.
  - (3) Any right of appeal under section 31(1)(a), (b) or (c) of this Act may not be exercised so as to reopen the question determined except to the extent (if any) that it could be reopened if it had been determined as a preliminary issue in that appeal.”
- (2) This paragraph applies—
- (a) where the notice of enquiry is given after the passing of this Act, or
  - (b) where the enquiry is in progress immediately before the passing of this Act.

For the purposes of paragraph (b) an enquiry is in progress until the officer's enquiries fall to be treated as completed under section 28A(5) or, as the case may be, section 28B(5) of the Taxes Management Act 1970 (c. 9) (as those provisions had effect apart from this Schedule).

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

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### *Enquiry into company tax return*

- 7 (1) In Part 4 of Schedule 18 to the Finance Act 1998 (c. 36) (enquiry into company tax return), after paragraph 31 insert—

#### *“Referral of questions to Special Commissioners during enquiry*

- 31A (1) At any time when an enquiry is in progress into a company’s tax return any question arising in connection with the subject-matter of the enquiry may be referred to the Special Commissioners for their determination.
- (2) Notice of referral must be given—
- (a) jointly by the company and the Inland Revenue,
  - (b) in writing,
  - (c) to the Special Commissioners.
- (3) The notice of referral must specify the question or questions being referred.
- (4) More than one notice of referral may be given under this paragraph in relation to an enquiry.
- (5) For the purposes of this paragraph the period during which an enquiry is in progress is the whole of the period—
- (a) beginning with the day on which the Inland Revenue give notice of enquiry into the return, and
  - (b) ending with the day on which the enquiry is completed.

#### *Withdrawal of notice of referral*

- 31B (1) The Inland Revenue or the company may withdraw a notice of referral under paragraph 31A by notice in accordance with this paragraph.
- (2) Notice of withdrawal must be given—
- (a) in writing,
  - (b) to the other party to the referral and to the Special Commissioners,
  - (c) before the first hearing by the Special Commissioners in relation to the referral.

#### *Effect of referral on enquiry*

- 31C (1) While proceedings on a referral under paragraph 31A are in progress in relation to an enquiry—
- (a) no closure notice shall be given in relation to the enquiry, and
  - (b) no application may be made for a direction to give such a notice.
- (2) For the purposes of this paragraph proceedings on a referral are in progress where—
- (a) notice of referral has been given,
  - (b) the notice has not been withdrawn, and
  - (c) the questions referred have not been finally determined.

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- (3) For the purposes of sub-paragraph (2)(c) a question referred is finally determined when—
- (a) it has been determined by the Special Commissioners, and
  - (b) there is no further possibility of that determination being varied or set aside (disregarding any power to grant permission to appeal out of time).

*Effect of determination*

- 31D (1) The determination of a question referred to the Special Commissioners under paragraph 31A is binding on the parties to the referral in the same way, and to the same extent, as a decision on a preliminary issue in an appeal.
- (2) The determination shall be taken into account by the Inland Revenue in reaching their conclusions on the enquiry.
- (3) Any right of appeal under paragraph 30 or 34(3) may not be exercised so as to reopen the question determined except to the extent (if any) that it could be reopened if it had been determined as a preliminary issue in that appeal.”.
- (2) This paragraph applies in relation to an enquiry under Part 4 of Schedule 18 to the Finance Act 1998 (c. 36)—
- (a) in relation to which notice of enquiry is given after the passing of this Act, or
  - (b) which is in progress (within the meaning of paragraph 31(5) of that Schedule) immediately before the passing of this Act.