



# Finance Act 1989

## 1989 CHAPTER 26

### PART II

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

#### CHAPTER IV

#### MANAGEMENT

#### *Information*

#### **142 Power to call for documents and information.**

- (1) Section 20 of the <sup>M1</sup> Taxes Management Act 1970 (power to call for documents of taxpayer and others) shall be amended in accordance with subsections (2) to (8) below.
- (2) In subsection (1), for the words “a person” onwards there shall be substituted the words “a person—
  - (a) to deliver to him such documents as are in the person’s possession or power and as (in the inspector’s reasonable opinion) contain, or may contain, information relevant to—
    - (i) any tax liability to which the person is or may be subject, or
    - (ii) the amount of any such liability, or
  - (b) to furnish to him such particulars as the inspector may reasonably require as being relevant to, or to the amount of, any such liability.”
- (3) In subsection (2), for the words “a person” onwards there shall be substituted the words “a person
  - (a) to deliver to a named officer of the Board such documents as are in the person’s possession or power and as (in the Board’s reasonable opinion) contain, or may contain, information relevant to—
    - (i) any tax liability to which the person is or may be subject, or

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- (ii) the amount of any such liability, or
- (b) to furnish to a named officer of the Board such particulars as the Board may reasonably require as being relevant to, or to the amount of, any such liability.”
- (4) In subsection (3)—
- (a) for the words “of the persons who in relation to the taxpayer are subject to this subsection” there shall be substituted the words “other person”, and
- (b) at the end there shall be added the words “; and the persons who may be required to deliver or make available a document under this subsection include the Director of Savings.”
- (5) Subsections (4) and (5) shall be omitted.
- (6) In subsection (6)—
- (a) for the words “under subsections (3) and (4)” there shall be substituted the words “for the purposes of this section”, and
- (b) the words “and in relation” onwards shall be omitted.
- (7) For subsection (8) there shall be substituted—
- “(8) Subject to subsection (8A) below, a notice under subsection (3) above shall name the taxpayer with whose liability the inspector (or, where section 20B(3) below applies, the Board is concerned.”
- (8) After subsection (8B) there shall be inserted—
- “(8C) In this section references to documents do not include—
- (a) personal records (as defined in section 12 of the Police and Criminal Evidence Act 1984), or
- (b) journalistic material (as defined in section 13 of that Act),
- and references to particulars do not include particulars contained in such personal records or journalistic material.
- (8D) Subject to subsection (8C) above, references in this section to documents and particulars are to those specified or described in the notice in question; and—
- (a) the notice shall require documents to be delivered (or delivered or made available), or particulars to be furnished, within such time (which, except in the case of a notice under subsection (2) above, shall not be less than thirty days after the date of the notice) as may be specified in the notice; and
- (b) the person to whom they are delivered, made available or furnished may take copies of them or of extracts from them.”
- (9) In section 12(3) of the <sup>M2</sup> National Savings Bank Act 1971, for the words “20(4)(b)” onwards there shall be substituted the words “20(3) of that Act (requirement to deliver or make available documents relating to liability of a taxpayer).”
- (10) This section shall apply with respect to notices given on or after the day on which this Act is passed.

**Marginal Citations**

**M1** 1970 c. 9.

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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, CHAPTER IV. (See end of Document for details)*

**M2** 1971 c. 29.

#### **143 Power to call for papers of tax accountant.**

- (1) In section 20A of the <sup>M3</sup> Taxes Management Act 1970 (power to call for papers of tax accountant) for the last sentence of subsection (1) there shall be substituted—

“(1A) The reference to documents in subsection (1) above does not include—

- (a) personal records (as defined in section 12 of the Police and Criminal Evidence Act 1984), or
- (b) journalistic material (as defined in section 13 of that Act).

(1B) Subject to subsection (1A) above, the reference to documents in subsection (1) above is to those specified or described in the notice in question; and—

- (a) the notice shall require documents to be delivered within such time (which shall not be less than thirty days after the date of the notice) as may be specified in the notice; and
- (b) the inspector may take copies of them or of extracts from them.”

- (2) This section shall apply with respect to notices given on or after the day on which this Act is passed.

#### **Marginal Citations**

**M3** 1970 c. 9.

#### **144 Restrictions on powers under TMA ss.20 and 20A.**

- (1) Section 20B of the <sup>M4</sup> Taxes Management Act 1970 (restrictions on powers under sections 20 and 20A) shall be amended as follows.

- (2) In subsection (1), after the word “question” there shall be inserted the words “, or to furnish the particulars in question”.

- (3) After that subsection there shall be inserted—

“(1A) Subject to subsection (1B) below, where a notice is given to any person under section 20(3) the inspector shall give a copy of the notice to the taxpayer to whom it relates.

(1B) If, on an application by the inspector, a General or Special Commissioner so directs, a copy of a notice under section 20(3) need not be given to the taxpayer to whom it relates; but such a direction shall not be given unless the Commissioner is satisfied that the inspector has reasonable grounds for suspecting the taxpayer of fraud.”

- (4) In subsection (2), after the words “deliver documents”, in the first place where they occur, there shall be inserted the words “or furnish particulars”.

- (5) In subsection (5), for the words from “if” to “or company” there shall be substituted the words “does not oblige a person”.

- (6) In subsection (7), the words from “to a person” to “daughter” shall be omitted.

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(7) For subsection (9) there shall be substituted—

- “(9) Subject to subsections (11) and (12) below, a notice under section 20(3) or (8A)—
- (a) does not oblige a person who has been appointed as an auditor for the purposes of any enactment to deliver or make available documents which are his property and were created by him or on his behalf for or in connection with the performance of his functions under that enactment, and
  - (b) does not oblige a tax adviser to deliver or make available documents which are his property and consist of relevant communications.
- (10) In subsections (9) above “relevant communications” means communications between the tax adviser and —
- (a) a person in relation to whose tax affairs he has been appointed, or
  - (b) any other tax adviser of such a person,
- the purpose of which is the giving or obtaining of advice about any of those tax affairs; and in subsection (9) above and this subsection “tax adviser” means a person appointed to give advice about the tax affairs of another person (whether appointed directly by that other person or by another tax adviser of his).
- (11) Subject to subsection (13) below, subsection (9) above shall not have effect in relation to any document which contains information explaining any information, return, accounts or other document which the person to whom the notice is given has, as tax accountant, assisted any client of his in preparing for, or delivering to, the inspector or the Board.
- (12) Subject to subsection (13) below, in the case of a notice under section 20(8A) subsection (9) above shall not have effect in relation to any document which contains information giving the identity or address of any taxpayer to whom the notice relates or of any person who has acted on behalf of any such person.
- (13) Subsection (9) above is not disapplied by subsection (11) or (12) above in the case of any document if—
- (a) the information within subsection (11) or (12) is contained in some other document, and
  - (b) either—
    - (i) that other document, or a copy of it, has been delivered to the inspector or the Board, or
    - (ii) that other document has been inspected by an officer of the Board.
- (14) Where subsection (9) above is disapplied by subsection (11) or (12) above in the case of a document, the person to whom the notice is given either shall deliver the document to the inspector or make it available for inspection by an officer of the Board or shall—
- (a) deliver to the inspector (or, where subsection (3) above applies, the Board) a copy (which is photographic or otherwise by way of facsimile) of any parts of the document which contain the information within subsection (11) or (12), and

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(b) if so required by the inspector (or, as the case may be, the Board), make available for inspection by a named officer of the Board such parts of the document as contain that information; and failure to comply with any requirement under paragraph (b) above shall constitute a failure to comply with the notice.”

(8) This section shall apply with respect to notices given on or after the day on which this Act is passed.

#### Marginal Citations

M4 1970c. 9.

### 145 Falsification etc. of documents.

(1) After section 20B of the <sup>M5</sup>Taxes Management Act 1970 there shall be inserted—

#### “20BB Falsification etc. of documents.

- (1) Subject to subsections (2) to (4) below, a person shall be guilty of an offence if he intentionally falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, a document which—
- (a) he has been required by a notice under section 20 or 20A above, or
  - (b) he has been given an opportunity in accordance with section 20B(1) above,
- to deliver, or to deliver or make available for inspection.
- (2) A person does not commit an offence under subsection (1) above if he acts—
- (a) with the written permission of a General or Special Commissioner, the inspector or an officer of the Board,
  - (b) after the document has been delivered or, in a case within section 20(3) or (8A) above, inspected, or
  - (c) after a copy has been delivered in accordance with section 20B(4) or (14) above and the original has been inspected.
- (3) A person does not commit an offence under subsection (1)(a) above if he acts after the end of the period of two years beginning with the date on which the notice is given, unless before the end of that period the inspector or an officer of the Board has notified the person in writing that the notice has not been complied with to his satisfaction.
- (4) A person does not commit an offence under subsection (1) (b) above if he acts—
- (a) after the end of the period of six months beginning with the date on which an opportunity to deliver the document was given, or
  - (b) after an application for consent to a notice being given in relation to the document has been refused.
- (5) A person guilty of an offence under subsection (1) above shall be liable—

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- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.”
- (2) This section shall apply to any falsification, concealment, destruction or disposal of a document occurring on or after the day on which this Act is passed.

**Marginal Citations**

**M5** 1970 c. 9.

**146 Entry with warrant to obtain documents.**

- (1) Section 20C of the <sup>M6</sup>Taxes Management Act 1970 (entry with warrant to obtain documents) shall be amended as follows.
- (2) In subsection (1)—
- (a) for the words “any form of fraud” there shall be substituted the words “serious fraud”, and
  - (b) for the words “has been” there shall be substituted the words “is being, has been or is about to be”.
- (3) After that subsection there shall be inserted—
- “(1A) Without prejudice to the generality of the concept of serious fraud—
- (a) any offence which involves fraud is for the purposes of this section an offence involving serious fraud if its commission had led, or is intended or likely to lead, either to substantial financial gain to any person or to serious prejudice to the proper assessment or collection of tax; and
  - (b) an offence which, if considered alone, would not be regarded as involving serious fraud may nevertheless be so regarded if there is reasonable ground for suspecting that it forms part of a course of conduct which is, or but for its detection would be, likely to result in serious prejudice to the proper assessment or collection of tax.
- (1B) The powers conferred by a warrant under this section shall not be exercisable—
- (a) by more than such number of officers of the Board as may be specified in the warrant;
  - (b) outside such times of day as may be so specified;
  - (c) if the warrant so provides, otherwise than in the presence of a constable in uniform.”
- (4) For subsections (3) to (5) there shall be substituted—
- “(3) An officer who enters the premises under the authority of a warrant under this section may—
- (a) take with him such other persons as appear to him to be necessary;
  - (b) seize and remove any things whatsoever found there which he has reasonable cause to believe may be required as evidence for the

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- purposes of proceedings in respect of such an offence as is mentioned in subsection (1) above; and
- (c) search or cause to be searched any person found on the premises whom he has reasonable cause to believe to be in possession of any such things;
- but no person shall be searched except by a person of the same sex.
- (4) Nothing in subsection (3) above authorises the seizure and removal of documents in the possession of a barrister, advocate or solicitor with respect to which a claim to professional privilege could be maintained.
- (5) An officer of the Board seeking to exercise the powers conferred by a warrant under this section or, if there is more than one such officer, that one of them who is in charge of the search—
- (a) if the occupier of the premises concerned is present at the time the search is to begin, shall supply a copy of the warrant endorsed with his name to the occupier;
- (b) if at that time the occupier is not present but a person who appears to the officer to be in charge of the premises is present, shall supply such a copy to that person; and
- (c) if neither paragraph (a) nor paragraph (b) above applies, shall leave such a copy in a prominent place on the premises.
- (6) Where entry to premises has been made with a warrant under this section, and the officer making the entry has seized any things under the authority of the warrant, he shall endorse on or attach to the warrant a list of the things seized.
- (7) Subsections (10) to (12) of section 16 of the Police and Criminal Evidence Act 1984 (return, retention and inspection of warrants) apply to a warrant under this section (together with any list endorsed on or attached to it under subsection (6) above) as they apply to a warrant issued to a constable under any enactment.
- (8) Subsection (7) above extends to England and Wales only.”
- (5) This section shall apply with respect to warrants issued on or after the day on which this Act is passed.

#### Marginal Citations

M6 1970 c. 9.

#### 147 Procedure where documents etc. are removed.

- (1) The following section shall be inserted after section 20C of the <sup>M7</sup>Taxes Management Act 1970—

##### “20CC Procedure where documents etc. are removed.

- (1) An officer of the Board who removes anything in the exercise of the power conferred by section 20C above shall, if so requested by a person showing himself—
- (a) to be the occupier of premises from which it was removed, or

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- (b) to have had custody or control of it immediately before the removal, provide that person with a record of what he removed.
- (2) The officer of the Board shall provide the record within a reasonable time from the making of the request for it.
- (3) Where anything which has been removed by an officer of the Board as mentioned in subsection (1) above is of such a nature that a photograph or copy of it would be sufficient—
- (a) for use as evidence at a trial for an offence, or
  - (b) for forensic examination or for investigation in connection with an offence,
- it shall not be retained longer than is necessary to establish that fact and to obtain the photograph or copy.
- (4) Subject to subsection (8) below, if a request for permission to be granted access to anything which—
- (a) has been removed by an officer of the Board, and
  - (b) is retained by the Board for the purpose of investigating an offence,
- is made to the officer in overall charge of the investigation by a person who had custody or control of the thing immediately before it was so removed or by someone acting on behalf of any such person, the officer shall allow the person who made the request access to it under the supervision of an officer of the Board.
- (5) Subject to subsection (8) below, if a request for a photograph or copy of any such thing is made to the officer in overall charge of the investigation by a person who had custody or control of the thing immediately before it was so removed, or by someone acting on behalf of any such person, the officer shall—
- (a) allow the person who made the request access to it under the supervision of an officer of the Board for the purpose of photographing it or copying it, or
  - (b) photograph or copy it, or cause it to be photographed or copied.
- (6) Where anything is photographed or copied under subsection (5)(b) above the photograph or copy shall be supplied to the person who made the request.
- (7) The photograph or copy shall be supplied within a reasonable time from the making of the request.
- (8) There is no duty under this section to grant access to, or to supply a photograph or copy of, anything if the officer in overall charge of the investigation for the purposes of which it was removed has reasonable grounds for believing that to do so would prejudice—
- (a) that investigation;
  - (b) the investigation of an offence other than the offence for the purposes of the investigation of which the thing was removed; or
  - (c) any criminal proceedings which may be brought as a result of—
    - (i) the investigation of which he is in charge, or
    - (ii) any such investigation as is mentioned in paragraph (b) above.



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- (9) Any reference in this section to the officer in overall charge of the investigation is a reference to the person whose name and address are endorsed on the warrant concerned as being the officer so in charge.”
- (2) This section shall apply with respect to warrants issued on or after the day on which this Act is passed.

#### Marginal Citations

M7 1970c. 9.

### 148 Interpretation.

- (1) Section 20D of the <sup>M8</sup>Taxes Management Act 1970 shall be amended as follows.
- (2) In subsection (2), for the words “of returns or accounts to be made or delivered by the other” there shall be substituted the words “or delivery of any information, return, accounts or other document which he knows will be, or is or are likely to be, used”.
- (3) For subsection (3) there shall be substituted—
- “(3) Without prejudice to section 127 of the Finance Act 1988, in sections 20 to 20CC above “document” has, subject to sections 20(8C) and 20A(1A), the same meaning as it has—
- (a) in relation to England and Wales, in Part I of the Civil Evidence Act 1968,
  - (b) in relation to Scotland, in Part III of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1968, and
  - (c) in relation to Northern Ireland, in Part I of the Civil Evidence Act (Northern Ireland) 1971.”
- (4) Subsection (3) above shall not affect the meaning of “business” in sections 20 and 20C of the <sup>M9</sup>Taxes Management Act 1970 before the coming into force of sections 142 and 146 above.

#### Marginal Citations

M8 1970 c. 9.

M9 1970 c.9.

*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

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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.
- (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 <sup>M10</sup>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),
  - [<sup>F1</sup>(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 <sup>M11</sup>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.

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#### Textual Amendments

- F1** S. 149(3)(c) repealed (31.7.1998 with effect in accordance with Sch. 3 of the amending Act) by 1998 c. 36, s. 165, Sch. 27 Pt. III(2), note

#### Marginal Citations

- M10** 1970 c.9.  
**M11** 1973 c. 51.

### 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—
- (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,

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- (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.

### **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

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- (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.

[<sup>F2</sup>(2) In this section “the relevant trustees”—

- (a) in relation to any income, other than gains treated as arising under Chapter II of Part XIII of the Taxes Act 1988, means the trustees to whom the income arises and any subsequent trustees of the settlement; and
- (b) in relation to gains treated as arising under Chapter II of Part XIII of the Taxes Act 1988, means the trustees in the year of assessment in which the gains arise 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.

#### **Textual Amendments**

- F2** S. 151(2) substituted (31.7.1998 with effect as mentioned in [Sch. 14 para. 7\(3\)\(4\)\(5\)](#) of the amending Act) by [1998 c. 36, s. 86, Sch. 14 para. 6](#)

*Distress and poinding etc.*

### **152 Distress for non-payment of tax.**

- (1) Section 61 of the <sup>M12</sup>Taxes Management Act 1970 (distress) shall be amended as follows.
- (2) In subsection (1), for the words “the collector shall” onwards there shall be substituted the words “the collector may distrain upon the goods and chattels of the person charged (in this section referred to as “the person in default”).”
- (3) In subsection (2), for the words from “a collector” to “Commissioners” there shall be substituted the words “a justice of the peace, on being satisfied by information on oath

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that there is reasonable ground for believing that a person is neglecting or refusing to pay a sum charged, may issue a warrant in writing authorising a collector to”.

- (4) In subsection (4), for the words “neglecting or refusing to pay” there shall be substituted the words “in default”.
- (5) In subsection (5)—
- (a) for the word “aforesaid” there shall be substituted the words “in default”,
  - (b) the words “within the said five days” shall be omitted,
  - (c) for the words from “two or more inhabitants of the parish” to “sufficient persons” there shall be substituted the words “one or more independent persons appointed by the collector”, and
  - (d) the words from “The costs” to “the collector, and” shall be omitted.
- (6) The following subsection shall be added after that subsection—
- “(6) The Treasury may by regulations make provision with respect to—
- (a) the fees chargeable on or in connection with the levying of distress, and
  - (b) the costs and charges recoverable where distress has been levied;
- and any such regulations shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the House of Commons.”
- (7) This section shall come into force on such day as the Treasury may by order made by statutory instrument appoint.

#### Marginal Citations

M12 1970 c. 9.

### 153 Priority in cases of distraint by others.

- (1) Section 62 of the <sup>M13</sup>Taxes Management Act 1970 (priority of claim for tax) shall be amended as follows.
- (2) In subsection (1)—
- (a) for the words from the beginning to “shall be” there shall be substituted the words “If at any time at which any goods or chattels belonging to any person (in this section referred to as “the person in default”) are”,
  - (b) for the word “unless” there shall be substituted the words “the person in default is in arrears in respect of any such sums as are referred to in subsection (1A) below, the goods or chattels may not be so taken unless on demand made by the collector”, and
  - (c) for the words “arrears of tax” onwards there shall be substituted the words “such sums as have fallen due at or before the date of seizure.”
- (3) The following subsection shall be inserted after that subsection—
- “(1A) The sums referred to in subsection (1) above are—
- (a) sums due from the person in default on account of deductions of income tax from emoluments paid during the period of twelve months next before the date of seizure, being deductions which the person in default was liable to make under section 203 of the principal Act (pay

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as you earn) less the amount of the repayments of income tax which he was liable to make during that period; and

- (b) sums due from the person in default in respect of deductions required to be made by him for that period under section 559 of the principal Act (sub-contractors in the construction industry).”

(4) In subsection (2)—

- (a) for the words from the beginning to “the collector shall” there shall be substituted the words “If the sums referred to in subsection (1) above are not paid within ten days of the date of the demand referred to in that subsection, the collector may”;
- (b) for the words “shall proceed” there shall be substituted the words “may proceed”, and
- (c) for the words “the tax charged and claimed” there shall be substituted the words “those sums”.

**Marginal Citations**

M13 1970 c. 9.

**154 Recovery of tax from debtor in Scotland.**

(1) Section 63 of the <sup>M14</sup>Taxes Management Act 1970 (recovery of tax in Scotland) shall be amended as follows.

(2) In subsection (3), for the words “which relates to” onwards there shall be substituted the words “insofar as it relates to sums due in respect of—

- (a) deductions of income tax which any person specified in the application was liable to make under section 203 of the principal Act (pay as you earn); or
- (b) deductions required to be made under section 559 of the principal Act (sub-contractors in the construction industry) by any person specified in the application.”

(3) The following subsection shall be added after that subsection—

“(4) In this section references to amounts of tax due and references to sums due in respect of deductions include references to amounts which are deemed to be—

- (a) amounts of tax which the person is liable to pay by virtue of the Income Tax (Employments) Regulations 1973; or
- (b) amounts which the person is liable to pay by virtue of the Income Tax (Sub-Contractors in the Construction Industry) Regulations 1975.”

**Marginal Citations**

M14 1970 c. 9.

*Status: Point in time view as at 02/07/2002.*

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## **155 Priority in cases of poinding etc. by others in Scotland.**

- (1) Section 64 of the Taxes Management Act 1970 (priority of claim for tax in Scotland) shall be amended as follows.
- (2) In subsection (1)—
  - (a) for the words from the beginning to “shall be” there shall be substituted the words “If at any time at which any moveable goods and effects belonging to any person (in this section referred to as “the person in default”) are”,
  - (b) for the word “unless” there shall be substituted the words “the person in default is in arrears in respect of any such sums as are referred to in subsection (1A) below, the goods and effects may not be so taken unless on demand made by the collector”, and
  - (c) for the words “the tax so in arrear” onwards there shall be substituted the words “such sums as have fallen due at or before the date of poinding or, as the case may be, other diligence or assignation.”
- (3) The following subsection shall be inserted after that subsection—
 

“(1A) The sums referred to in subsection (1) above are—

  - (a) sums due from the person in default on account of deductions of income tax from emoluments paid during the period of twelve months next before the date of poinding, being deductions which the person in default was liable to make under section 203 of the principal Act (pay as you earn) less the amount of the repayments of income tax which he was liable to make during that period; and
  - (b) sums due from the person in default in respect of deductions required to be made by him for that period under section 559 of the principal Act (sub-contractors in the construction industry).”
- (4) In subsection (2)—
  - (a) for the words from the beginning to “the tax claimed shall” there shall be substituted the words “If the sums referred to in subsection (1) above are not paid within ten days of the date of the demand referred to in that subsection, the sums shall”, and
  - (b) for the words “proceeding at his instance” there shall be substituted the word “proceedings”.

*Interest etc.*

## **156 Interest on overdue tax.**

- (1) In section 86 of the <sup>M15</sup>Taxes Management Act 1970, for subsection (3) and the words in subsection (4) preceding the Table there shall be substituted—
 

“(3) For the purposes of this section—

  - (a) the reckonable date in relation to any tax charged by an assessment to income tax under Schedule E, and
  - (b) subject to subsection (3A) below, the reckonable date in relation to tax charged by any other assessment to which this section applies, is the date on which the tax becomes due and payable.



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- (3A) Where an appeal has been made against an assessment and any of the tax charged by the assessment is due and payable on a date later than the date given by the Table in subsection (4) below, the reckonable date in relation to the tax so due and payable is the later of—
- (a) the date given by that Table, and
  - (b) the date on which the tax would have been due and payable if there had been no appeal against the assessment (assuming in a case where the tax would not have been charged by the assessment if there had been no appeal that it was so charged).
- (4) The Table referred to in subsection (3A) above is as follows—”.
- (2) In section 55 of that Act—
- (a) in subsection (2), for the words “it were” onwards there shall be substituted the words “there had been no appeal.”,
  - (b) in subsection (6), for paragraphs (a) and (b) there shall be substituted—
    - “(a) in the case of a determination made on an application under subsection (3) above, other than an application made by virtue of subsection (3A) above, the date on which any tax the payment of which is not so postponed is due and payable shall be determined as if the tax were charged by an assessment notice of which was issued on the date of that determination and against which there had been no appeal; and
    - (b) in the case of a determination made on an application under subsection (4) above—
      - (i) the date on which any tax the payment of which ceases to be so postponed is due and payable shall be determined as if the tax were charged by an assessment notice of which was issued on the date of that determination and against which there had been no appeal; and
      - (ii) any tax overpaid shall be repaid.” and
  - (c) for subsection (9) there shall be substituted—

“(9) On the determination of the appeal—

    - (a) the date on which any tax payable in accordance with that determination is due and payable shall, so far as it is tax the payment of which had been postponed, or which would not have been charged by the assessment if there had been no appeal, be determined as if the tax were 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) against which there had been no appeal; and
    - (b) any tax overpaid shall be repaid.”
- (3) In section 56(9) of that Act, for the words “amount of” there shall be substituted the words “amount charged by”.

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- (4) This section shall apply to tax charged by any assessment notice of which is issued after 30th July 1982.

**Marginal Citations**

M15 1970 c. 9.

**157 Effect of certain claims on interest.**

- (1) In relation to any tax charged by an assessment made under section 252(1) of the Taxes Act 1988 to recover corporation tax that becomes payable as a result of the making of a claim under section 240 of that Act, the reckonable date for the purposes of section 86 of the <sup>M16</sup>Taxes Management Act 1970 (in this section referred to as “section 86”) is the date which is given by paragraph 5 of the Table in subsection (4) of that section.
- (2) Subsections (3) and (4) below apply in any case where—
- (a) there is in any accounting period of a company (in this section referred to as “the later period”) an amount of surplus advance corporation tax, as defined in subsection (3) of section 239 of the Taxes Act 1988, and
  - (b) pursuant to a claim under the said subsection (3), the whole or any part of that amount is treated for the purposes of the said section 239 as discharging liability for an amount of corporation tax for an earlier accounting period (in this section referred to as “the earlier period”), and
  - (c) if the claim under the said subsection (3) had not been made—
    - (i) an amount of corporation tax assessed for the earlier period would carry interest in accordance with section 86, or
    - (ii) an assessment could have been made under section 252(1) of that Act to recover corporation tax for the earlier period.
- (3) In determining the amount of interest payable under section 86 on corporation tax unpaid for the earlier period, no account shall be taken of any reduction in the amount of that tax which results from section 239(3) of the Taxes Act 1988 except so far as concerns interest for any time after the day following the expiry of nine months from the end of the later period.
- (4) Where, but for the claim under section 239(3) of the Taxes Act 1988, an assessment could have been made under section 252(1) of that Act to recover corporation tax for the earlier period, interest under section 86 shall be chargeable, in relation to any time not later than the day referred to in subsection (3) above, as if the claim had not been made and such an assessment had been made.
- (5) In relation to interest charged under section 86 by virtue of subsection (4) above, section 69 of the <sup>M17</sup>Taxes Management Act 1970 shall have effect with the substitution for the words following paragraph (c) of the words “as if it were tax charged and due and payable under an assessment”.
- (6) In this section—
- (a) subsection (1) above shall have effect where the claim under 240 of the Taxes Act 1988 is made on or after 14th March 1989, and
  - (b) subsections (2) to (5) above shall have effect where the claim under section 239(3) of that Act is made on or after that date,

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but this section shall not have effect in relation to corporation tax for any accounting period ending after the day which is the appointed day for the purposes of section 85 of the <sup>M18</sup>Finance (No.2) Act 1987.

#### Marginal Citations

**M16** 1970 c. 9.

**M17** 1970 c. 9.

**M18** 1987 c. 51.

### 158 Small amounts of interest.

- (1) In the Taxes Management Act 1970—
- (a) section 86(6) (remission of interest payable on overdue income tax, capital gains tax or corporation tax where interest would not exceed £30), and
  - (b) section 87(4) (no interest payable on overdue advance corporation tax or income tax on company payments where interest would not exceed £30),
- shall cease to have effect.
- (2) The words “of not less than £25” in—
- (a) [<sup>F3</sup>section 283(1) of the <sup>M19</sup>Taxation of Chargeable Gains Act 1992] (no repayment supplement where overdue repayment of capital gains tax less than £25), and
  - (b) section 824(1)(a) and (b) and (5) of the Taxes Act 1988 (no repayment supplement where overdue repayment of income tax etc. less than £25),
- and the words “of not less than £100” in section 825(2) of the Taxes Act 1988 (no repayment supplement where overdue repayment of company tax less than £100) shall cease to have effect.
- (3) Paragraph (a) of subsection (1) above shall have effect—
- (a) in relation to income tax under Schedule E, where the demand for the tax is made on or after the appointed day, and
  - (b) in any other case, where the tax is charged by an assessment notice of which is issued on or after the appointed day.
- (4) Paragraph (b) of that subsection shall have effect where the tax is charged by an assessment relating to an accounting period beginning on or after the appointed day.
- (5) Subsection (2) above shall have effect in relation to repayments of tax made on or after the appointed day.
- (6) In this section “the appointed day” means such day as the Treasury may by order made by statutory instrument appoint; and different days may be appointed for different enactments or for different purposes of the same enactment.

#### Textual Amendments

**F3** Words in s. 158(2)(a) substituted (6.3.1992 with effect as mentioned in s. 289(1)(2) of the substituting Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, **Sch. 10 para. 19(3)** (with ss. 60, 101(1), 201(3))

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#### Marginal Citations

M19 1975 c. 45.

#### [<sup>F4</sup>159 Interest on tax in case of failure or error.

- (1) Section 88 of the <sup>M20</sup>Taxes Management Act 1970 (interest on tax recovered to make good loss due to taxpayer's fault) shall be amended as follows.
- (2) In subsection (1), for the words “the fraud, wilful default or neglect of any person” there shall be substituted the words—
  - “(a) a failure to give a notice, make a return or produce or furnish a document or other information required by or under the Taxes Acts, or
  - (b) an error in any information, return, accounts or other document delivered to an inspector or other officer of the Board.”
- (3) The following subsection shall be added at the end—
  - “(7) In paragraph (a) of subsection (1) above the reference to a failure to do something includes, in relation to anything required to be done at a particular time or within a particular period, a reference to a failure to do it at that time or within that period; and, accordingly, section 118(2) of this Act shall not apply for the purposes of that paragraph.”
- (4) This section shall have effect in relation to failures occurring, and errors in any information or documents delivered, on or after the day on which this Act is passed.]

#### Textual Amendments

F4 S. 159 repealed (29.4.1996 with effect as specified in Sch. 18 para. 17 of the amending Act) by 1996 c. 8, s. 205, Sch. 41 Pt. V(8), note

#### Marginal Citations

M20 1970 c. 9.

#### 160 Determinations under TMA s. 88.

[<sup>F5</sup>(1) In subsection (1) of section 88 of the Taxes Management Act 1970, for the words “shall carry” there shall be substituted the words “shall, if an inspector or the Board so determine, carry”.]

[<sup>F5</sup>(2) The following section shall be inserted after that section—

##### “ Determinations under section 88.

- (1) Notice of a determination under section 88 above shall be served on the person liable to pay the interest to which it relates and shall specify—
  - (a) the date on which it is issued,
  - (b) the amount of the tax which carries interest and the assessment by which that tax was charged,
  - (c) the date when for the purposes of section 88 above that tax ought to have been paid, and

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- (d) the time within which an appeal against the determination may be made.
- (2) After the notice of a determination under section 88 above has been served the determination shall not be altered except in accordance with this section.
- (3) A determination under section 88 above may be made at any time—
- (a) within six years after the end of the chargeable period for which the tax carrying the interest is charged (or, in the case of development land tax, of the financial year in which the liability for that tax arose), or
  - (b) within three years after the date of the final determination of the amount of that tax.
- (4) An appeal may be brought against a determination under section 88 above and, subject to the following provisions of this section, the provisions of this Act relating to appeals shall have effect in relation to an appeal against such a determination as they have effect in relation to an appeal against an assessment to tax.
- (5) On an appeal against a determination under section 88 above section 50(6) to (8) of this Act shall not apply but the Commissioners may—
- (a) if it appears to them that the tax carries no interest under that section, set the determination aside,
  - (b) if the determination appears to them to be correct, confirm the determination, or
  - (c) if the determination appears to them to be incorrect as to the amount of tax or the date on which the tax ought to have been paid, revise the determination accordingly.”]

(3) In section 70 (certificates) of the <sup>M21</sup>Taxes Management Act 1970, for subsection (3) there shall be substituted—

“(3) A certificate of the inspector or any other officer of the Board that it has been determined that tax carries interest under section 88 of this Act, together with a certificate of the collector that payment of the interest has not been made to him, or, to the best of his knowledge and belief, to any other collector, or to any person acting on his behalf or on behalf of another collector, shall be sufficient evidence—

    - (a) that interest is chargeable on the tax from the date when for the purposes of section 88 of this Act the tax ought to have been paid, and
    - (b) that the sum mentioned in the certificate is unpaid and is due to the Crown;

and any document purporting to be such a certificate as is mentioned in this subsection shall be deemed to be such a certificate unless the contrary is proved.”

[<sup>F5</sup>(4) In section 113 of that Act (form of documents), the following subsection shall be inserted after subsection (1B)—

“(1C) Where an officer of the Board has decided that an amount of tax carries interest under section 88 of this Act and has taken the decisions needed for arriving at the date when for the purposes of that section that tax ought to have been paid, he may entrust to any other officer of the Board responsibility for completing the determination procedure, whether by means involving the use

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of a computer or otherwise, including responsibility for serving notice of the determination on the person liable to the interest.”]

(5) In section 114 of that Act (want of form not to invalidate), after the word “assessment”, in each place where it occurs, there shall be inserted the words “or determination”.

[<sup>F6</sup>(6) In paragraph 5 of Schedule 3 to that Act (rules for assigning proceedings to Commissioners), the following entry shall be inserted in the first column after the entry relating to an appeal against an assessment to capital gain tax— “ An appeal against a determination under section 88 of this Act. ”]

**Textual Amendments**

**F5** S. 160(1)(2)(4) repealed (29.4.1996 with effect as specified in [Sch. 18 para. 17](#) of the amending Act) by 1996 c. 8, s. 205, [Sch. 41 Pt. V\(8\)](#), note

**F6** S. 160(6) repealed (29.4.1996 with effect as mentioned in [Sch. 22 para. 12](#) of the amending Act) by 1996 c. 8, s. 205, [Sch. 41 Pt. V\(12\)](#), note

**Marginal Citations**

**M21** 1970 c. 9.

[<sup>F7</sup>**161 Tax carrying interest under TMA ss. 86 and 88.**

The following subsection shall be substituted for section 88(3) of the <sup>M22</sup>Taxes Management Act 1970—

“(3) Where it is finally determined that any tax carries interest under this section, the tax shall carry no interest under section 86 or 86A above (and, accordingly, any interest under either of those sections which has been paid before the final determination shall be set off against the amount of the interest under this section); and for the purposes of this subsection a determination that tax carries interest is not final until it can no longer be varied, whether by any Commissioners on appeal or by the order of any court.”]

**Textual Amendments**

**F7** S. 161 repealed (29.4.1996 with effect as specified in [Sch. 18 para. 17](#) of the amending Act) by 1996 c. 8, s. 205, [Sch. 41 Pt. V\(8\)](#), note

**Marginal Citations**

**M22** 1970 c. 9.

*Penalties*

**162 Failure to make return.**

(1) Section 93 of the Taxes Management Act 1970 (failure to comply with notice to make return for income tax or capital gains tax) shall be amended as follows.

(2) In subsection (1) (initial and daily penalties), for paragraphs (a) and (b) there shall be substituted—

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- “(a) to a penalty not exceeding £300, and  
(b) if the failure continues after a penalty is imposed under paragraph (a) above, to a further penalty or penalties not exceeding £60 for each day on which the failure continues after the day on which the penalty under paragraph (a) above was imposed (but excluding any day for which a penalty under this paragraph has already been imposed).”
- (3) The following subsection shall be substituted for subsection (2)—
- “(2) If a failure by a person to comply with a notice such as is referred to in subsection (1) above continues after the end of the year of assessment following that during which it was served then, without prejudice to any penalty under subsection (1) above, he shall be liable to a penalty of an amount not exceeding so much of the tax with which he is charged (whether for one or for more than one year of assessment) in assessments—
- (a) based wholly or partly on any income or chargeable gains that ought to have been included in the return required by the notice, and  
(b) made after the end of the year next following the year of assessment in which the notice was served,
- as is attributable to the income or chargeable gains that ought to have been so included.”
- (4) The following subsection shall be substituted for subsection (5)—
- “(5) No penalty shall be imposed under subsection (1) above in respect of a failure at any time after the failure has been remedied.”
- (5) The following subsection shall be substituted for subsection (7)—
- “(7) If the person on whom a notice is served proves that there was no income or chargeable gain to be included in the return, the penalty under this subsection shall not exceed £100.”
- (6) This section shall apply in relation to any failure to comply with a notice served on or after 6th April 1989.

### **163 Incorrect return, accounts etc.**

- (1) In—
- (a) section 95(1) of the <sup>M23</sup>Taxes Management Act 1970 (incorrect return etc. for income tax or capital gains tax), and  
(b) section 96(1) of that Act (incorrect return etc. for corporation tax),
- for the words “the aggregate” onwards there shall be substituted the words “the amount of the difference specified in subsection (2) below.”
- (2) This section shall apply in relation to returns, statements, declarations or accounts delivered, made or submitted on or after the day on which this Act is passed.

#### **Marginal Citations**

**M23** 1970 c. 9.

*Status: Point in time view as at 02/07/2002.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1989, CHAPTER IV. (See end of Document for details)*

## 164 Special returns, information etc.

- (1) Section 98 of the Taxes Management Act 1970 (special returns, information etc.) shall be amended as follows.
- (2) In subsection (1) (initial and daily penalties)—
  - (a) for the word “Where” there shall be substituted the words “Subject to section 98A below, where”, and
  - (b) for the words “subsection (3)” onwards there shall be substituted the words “subsections (3) and (4) below—
    - (i) to a penalty not exceeding £300, and
    - (ii) if the failure continues after a penalty is imposed under paragraph (i) above, to a further penalty or penalties not exceeding £60 for each day on which the failure continues after the day on which the penalty under paragraph (i) above was imposed (but excluding any day for which a penalty under this paragraph has already been imposed).”
- (3) In subsection (2) (maximum penalty for information given fraudulently or negligently)—
  - (a) for the word “Where” there shall be substituted the words “Subject to section 98A below, where”, and
  - (b) for the words “ £250, or, in the case of fraud, £500” there shall be substituted “ £3,000”.
- (4) The following subsections shall be substituted for subsection (3)—
  - “(3) No penalty shall be imposed under subsection (1) above in respect of a failure within paragraph (a) of that subsection at any time after the failure has been remedied.
  - (4) No penalty shall be imposed under paragraph (ii) of subsection (1) above in respect of a failure within paragraph (b) of that subsection at any time after the failure has been remedied.”
- (5) In the Table—
  - (a) in the first column, in the entry relating to Part III of the <sup>M24</sup>Taxes Management Act 1970, the words “, except sections 16 and 24(2)” shall be omitted;
  - (b) the entries relating to sections 38(5) and 42 of the Taxes Act 1988 shall be moved from the second column to the appropriate place in the first column; and
  - (c) the entry relating to section 481(5)(k) of that Act shall be omitted from the first column and an entry relating to section 482(2) of that Act shall be inserted at the appropriate place in the second column.
- (6) In consequence of the amendment made by subsection (5)(a) above section 16(6) of the Taxes Management Act 1970 shall cease to have effect.
- (7) This section shall apply in relation to—
  - (a) any failure to comply with a notice or to furnish information, give a certificate or produce a document or record beginning on or after the day on which this Act is passed, and
  - (b) the furnishing, giving, producing or making of any incorrect information, certificate, document, record or declaration on or after that day.



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#### Marginal Citations

M24 1970 c.9.

### 165 Special penalties in the case of certain returns.

- (1) The following section shall be inserted after section 98 of the Taxes Management Act 1970—

#### “98A Special penalties in the case of certain returns.

- (1) Regulations under section 203(2) (PAYE) or 566(1) (sub-contractors) of the principal Act may provide that this section shall apply in relation to any specified provision of the regulations.
- (2) Where this section applies in relation to a provision of regulations, any person who fails to make a return in accordance with the provision shall be liable—
- (a) to a penalty or penalties of the relevant monthly amount for each month (or part of a month) during which the failure continues, but excluding any month after the twelfth or for which a penalty under this paragraph has already been imposed, and
  - (b) if the failure continues beyond twelve months, without prejudice to any penalty under paragraph (a) above, to a penalty not exceeding so much of the amount payable by him in accordance with the regulations for the year of assessment to which the return relates as remained unpaid at the end of 19th April after the end of that year.
- (3) For the purposes of subsection (2)(a) above, the relevant monthly amount in the case of a failure to make a return—
- (a) where the number of persons in respect of whom particulars should be included in the return is fifty or less, is £100, and
  - (b) where that number is greater than fifty, is £100 for each fifty such persons and an additional £100 where that number is not a multiple of fifty.
- (4) Where this section applies in relation to a provision of regulations, any person who fraudulently or negligently makes an incorrect return of a kind mentioned in the provision shall be liable to a penalty not exceeding the difference between—
- (a) the amount payable by him in accordance with the regulations for the year of assessment to which the return relates, and
  - (b) the amount which would have been so payable if the return had been correct.”

- [<sup>F8</sup>(2) In relation to a failure to make a return beginning before such day as the Treasury may by order made by statutory instrument appoint, section 98A(2) shall have effect with the substitution of the following paragraph for paragraph (a)—

“(a) to—

- (i) a penalty not exceeding twelve times the relevant monthly amount, and

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- (ii) if the failure continues after a penalty is imposed under sub-paragraph(i) above, a further penalty or penalties of the relevant monthly amount foreach month (or part of a month) during which the failure continues, butexcluding any month after the twelfth or for which a penalty under thissub-paragraph has already been imposed,.”.]

#### Textual Amendments

- F8** S. 165(2) repealed (with effect in relation to failures beginning on or after 20.5.1995) by Finance Act 1989 (c. 26, SIF 63:1), ss. 165(2), 187(1), Sch. 17 Pt. VIII Note 7; S.I. 1994/2508, art. 2

### 166 Assisting in preparation of incorrect return etc.

- (1) The following section shall be substituted for section 99 of the <sup>M25</sup>Taxes Management Act 1970—

#### “99 Assisting in preparation of incorrect return etc.

Any person who assists in or induces the preparation or delivery of anyinformation, return, accounts or other document which—

- (a) he knows will be, or is or are likely to be, used for any purpose of tax,and  
 (b) he knows to be incorrect,  
 shall be liable to a penalty not exceeding £3,000.”

- (2) This section shall apply in relation to assistance and inducementsoccurring on or after the day on which this Act is passed.

#### Marginal Citations

- M25** 1970c. 9.

### 167 Determination of penalties.

The following sections shall be substituted for section 100 of the <sup>M26</sup>Taxes Management Act 1970—

#### “100 Determination of penalties by officer of Board.

- (1) Subject to subsection (2) below and except where proceedings for a penaltyhave been instituted under section 100D below or a penalty has been imposedby the Commissioners under section 53 of this Act, an officer of the Boardauthorised by the Board for the purposes of this section may make adetermination imposing a penalty under any provision of the Taxes Acts andsetting it at such amount as, in his opinion, is correct or appropriate.

- (2) Subsection (1) above does not apply where the penalty is a penaltyunder—

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- (a) section 93(1) above as it has effect before the amendments made by section 162 of the Finance Act 1989 or section 93(1)(a) above as it has effect after those amendments,
  - (b) section 94(1) above as it has effect before the substitution made by section 83 of the Finance (No.2) Act 1987,
  - (c) section 98(1) above as it has effect before the amendments made by section 164 of the Finance Act 1989 or section 98(1)(i) above as it has effect after those amendments, or
  - (d) paragraph (a)(i) of section 98A(2) above as it has effect by virtue of section 165(2) of the Finance Act 1989.
- (3) Notice of a determination of a penalty under this section shall be served on the person liable to the penalty and shall state the date on which it is issued and the time within which an appeal against the determination may be made.
- (4) After the notice of a determination under this section has been served the determination shall not be altered except in accordance with this section on appeal.
- (5) If it is discovered by an officer of the Board authorised by the Board for the purposes of this section that the amount of a penalty determined under this section is or has become insufficient the officer may make a determination in a further amount so that the penalty is set at the amount which, in his opinion, is correct or appropriate.
- (6) In any case where—
- (a) a determination under this section is of a penalty under section 94(6) above, and
  - (b) after the determination has been made it is discovered by an officer of the Board authorised by the Board for the purposes of this section that the amount which was taken into account as the relevant amount of tax is or has become excessive,
- the determination shall be revised so that the penalty is set at the amount which is correct; and, where more than the correct amount has already been paid, the appropriate amount shall be repaid.

#### **100A Provisions supplementary to section 100.**

- (1) Where a person who has incurred a penalty has died, a determination under section 100 above which could have been made in relation to him may be made in relation to his personal representatives, and any penalty imposed on personal representatives by virtue of this subsection shall be a debt due from and payable out of his estate.
- (2) A penalty determined under section 100 above shall be due and payable at the end of the period of thirty days beginning with the date of the issue of the notice of determination.
- (3) A penalty determined under section 100 above shall for all purposes be treated as if it were tax charged in an assessment and due and payable.

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### **100B Appeals against penalty determinations.**

- (1) An appeal may be brought against the determination of a penalty under section 100 above and, subject to the following provisions of this section, the provisions of this Act relating to appeals shall have effect in relation to an appeal against such a determination as they have effect in relation to an appeal against an assessment to tax.
- (2) On an appeal against the determination of a penalty under section 100 above section 50(6) to (8) of this Act shall not apply but—
  - (a) in the case of a penalty which is required to be of a particular amount, the Commissioners may—
    - (i) if it appears to them that no penalty has been incurred, set the determination aside,
    - (ii) if the amount determined appears to them to be correct, confirm the determination, or
    - (iii) if the amount determined appears to them to be incorrect, increase or reduce it to the correct amount,
  - (b) in the case of any other penalty, the Commissioners may—
    - (i) if it appears to them that no penalty has been incurred, set the determination aside,
    - (ii) if the amount determined appears to them to be appropriate, confirm the determination,
    - (iii) if the amount determined appears to them to be excessive, reduce it to such other amount (including nil) as they consider appropriate, or
    - (iv) if the amount determined appears to them to be insufficient, increase it to such amount not exceeding the permitted maximum as they consider appropriate.
- (3) Without prejudice to section 56 of this Act, an appeal from a decision of the Commissioners against the amount of a penalty which has been determined under section 100 above or this section shall lie, at the instance of the person liable to the penalty, to the High Court or, in Scotland, to the Court of Session as the Court of Exchequer in Scotland; and on that appeal the court shall have the like jurisdiction as is conferred on the Commissioners by virtue of this section.

### **100C Penalty proceedings before Commissioners.**

- (1) An officer of the Board authorised by the Board for the purposes of this section may commence proceedings before the General or Special Commissioners for any penalty to which subsection (1) of section 100 above does not apply by virtue of subsection (2) of that section.
- (2) Proceedings under this section shall be by way of information in writing, made to the Commissioners, and upon summons issued by them to the defendant (or defender) to appear before them at a time and place stated in the summons; and they shall hear and decide each case in a summary way.

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- (3) Any penalty determined by the Commissioners in proceedings under this section shall for all purposes be treated as if it were tax charged in an assessment and due and payable.
- (4) An appeal against the determination of a penalty in proceedings under this section shall lie to the High Court or, in Scotland, the Court of Session as the Court of Exchequer in Scotland—
  - (a) by any party on a question of law, and
  - (b) by the defendant (or, in Scotland, the defender) against the amount of the penalty.
- (5) On any such appeal the court may—
  - (a) if it appears that no penalty has been incurred, set the determination aside,
  - (b) if the amount determined appears to be appropriate, confirm the determination,
  - (c) if the amount determined appears to be excessive, reduce it to such other amount (including nil) as the court considers appropriate, or
  - (d) if the amount determined appears to be insufficient, increase it to such amount not exceeding the permitted maximum as the court considers appropriate.

#### **100D Penalty proceedings before court.**

- (1) Where in the opinion of the Board the liability of any person for a penalty arises by reason of the fraud of that or any other person, proceedings for the penalty may be instituted before the High Court or, in Scotland, the Court of Session as the Court of Exchequer in Scotland.
- (2) Proceedings under this section which are not instituted (in England, Wales or Northern Ireland) under the Crown Proceedings Act 1947 by and in the name of the Board as an authorised department for the purposes of that Act shall be instituted—
  - (a) in England and Wales, in the name of the Attorney General,
  - (b) in Scotland, in the name of the Lord Advocate, and
  - (c) in Northern Ireland, in the name of the Attorney General for Northern Ireland.
- (3) Any proceedings under this section instituted in England and Wales shall be deemed to be civil proceedings by the Crown within the meaning of Part II of the Crown Proceedings Act 1947 and any such proceedings instituted in Northern Ireland shall be deemed to be civil proceedings within the meaning of that Part of that Act as for the time being in force in Northern Ireland.
- (4) If in proceedings under this section the court does not find that fraud is proved but considers that the person concerned is nevertheless liable to a penalty, the court may determine a penalty notwithstanding that, but for the opinion of the Board as to fraud, the penalty would not have been a matter for the court.”

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### Marginal Citations

M26 1970 c. 9.

## 168 Amendments consequential on section 167.

- (1) In consequence of the amendment made by section 167 above the <sup>M27</sup>Taxes Management Act 1970 shall be amended in accordance with subsections (2) to (8) below.
- (2) In section 20A (power to call for papers of tax accountant)—
- (a) in subsection (1), for the words “awarded against him a penalty incurred by” there shall be substituted the words “a penalty imposed on”,
  - (b) in subsection (2), for the word “award” in the first place where it occurs there shall be substituted the word “penalty” and for that word in the second place where it occurs there shall be substituted the word “imposition”, and
  - (c) in subsection (4), for the words “award against” there shall be substituted the words “imposition on” and for the word “award” there shall be substituted the word “penalty”.
- <sup>F9</sup>(3) .....
- (4) In section 102 (mitigation of penalties), for the words “recovery thereof” there shall be substituted the words “a penalty”.
- (5) In section 105 (evidence)—
- (a) the following paragraph shall be substituted for paragraph (a) of subsection (1)
 

“(a) pecuniary settlements may be accepted instead of a penalty being determined, or proceedings being instituted, in relation to any tax,”
  - (b) in paragraph (b) of subsection (2), for the words “sum” onwards there shall be substituted the words “tax due from him”, and
  - (c) after that paragraph there shall be inserted the words “and
    - (c) any proceedings for a penalty or on appeal against the determination of a penalty.”
- (6) In section 112 (loss of documents etc.), the following subsection shall be added at the end—
- “(3) The references in subsection (1) above to assessments to tax include references to determinations of penalties; and in its application to such determinations the proviso to that subsection shall have effect with the appropriate modifications.”
- (7) In section 113 (form of documents)—
- (a) the following subsection shall be inserted after subsection (1C)—
 

“(1D) Where an officer of the Board has decided to impose a penalty under section 100 of this Act and has taken all other decisions needed for arriving at the amount of the penalty, he may entrust to any other officer of the Board responsibility for completing the determination procedure, whether by means involving the use of a

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computer or otherwise, including responsibility for serving notice of the determination on the person liable to the penalty.” and

- (b) in subsection (3)—
- (i) after the words “Every assessment,” there shall be inserted the words “determination of a penalty,”
  - (ii) after the words “notice of assessment” there shall be inserted the words “, of determination”, and
  - (iii) after the words “levying tax” there shall be inserted the words “or determining a penalty”.

[<sup>F10</sup>(8) In paragraph 5 of Schedule 3 (rules for assigning proceedings to Commissioners), for the words “section 100(4)” there shall be substituted the words “section 100C or an appeal under section 100B against the determination of a penalty”.]

(9) In section 41 of the <sup>M28</sup>Development Land Tax Act 1976 (administration of development land tax) the following subsection shall be inserted after subsection (1)—

“(1A) Nothing in sections 167 to 169 of the Finance Act 1989 shall apply to penalties relating to development land tax.”

#### Textual Amendments

**F9** S. 168(3) repealed (1.9.1994) by S.I. 1994/1813, reg. 2(2), Sch. 2 Pt. I

**F10** S. 168(8) repealed (29.4.1996 with effect as mentioned in Sch. 22 para. 12 of the amending Act) by 1996 c. 8, s. 205, Sch. 41 Pt. V(12), note

#### Marginal Citations

**M27** 1970 c.9.

**M28** 1976 c. 24.

## 169 Time limits.

(1) The following section shall be substituted for section 103 of the <sup>M29</sup>Taxes Management Act 1970—

### “103 Time limits for penalties.

- (1) Subject to subsection (2) below, where the amount of a penalty is to be ascertained by reference to tax payable by a person for any period, the penalty may be determined by an officer of the Board, or proceedings for the penalty may be commenced before the Commissioners or a court—
- (a) at any time within six years after the date on which the penalty was incurred, or
  - (b) at any later time within three years after the final determination of the amount of tax by reference to which the amount of the penalty is to be ascertained.
- (2) Where the tax was payable by a person who has died, and the determination would be made in relation to his personal representatives, subsection (1)(b) above does not apply if the tax was charged in an assessment made later than six years after the end of the chargeable period for which it was charged.

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- (3) A penalty under section 99 of this Act may be determined by an officer of the Board, or proceedings for such a penalty may be commenced before a court, at any time within twenty years after the date on which the penalty was incurred.
- (4) A penalty to which neither subsection (1) nor subsection (3) above applies may be so determined, or proceedings for such a penalty may be commenced before the Commissioners or a court, at any time within six years after the date on which the penalty was incurred or began to be incurred.”
- (2) The amendment made by subsection (1) above shall not affect the application of section 103(4) of the <sup>M30</sup>Taxes Management Act 1970 to proceedings under section 100 of that Act as it has effect before the amendment made by section 167 above.

#### Marginal Citations

**M29** 1970c. 9.

**M30** 1970 c. 9.

### 170 Up-rating of certain penalties.

[<sup>F11</sup>(1) In section 23(8) of the Taxes Act 1988 (maximum penalty for agents failing to make certain payments on behalf of principals), for “£50” there shall be substituted “£300”.]

<sup>F12</sup>(2) .....

- (3) In section 306(6) of that Act (maximum penalty for false certificates or statements relating to investment in corporate trades), for the words “£250 or, in the case of fraud, £500” there shall be substituted “£3,000”.
- (4) In—
- (a) section 619(7) of that Act (maximum penalty for false statements or representations relating to relief for qualifying premiums),
  - (b) section 653 of that Act (maximum penalty for statements or representations about personal pension schemes), and
  - (c) section 658(5) of that Act (maximum penalty for false statements or representations relating to purchased life annuities),
- for “£500” there shall be substituted “£3,000”.
- (5) In paragraph 2(4) of Schedule 19A to that Act and Schedule 16A to the <sup>M31</sup>Finance Act 1973 (maximum penalty for incorrect return by Lloyd’s agent), for the words “£500 in the case of fraud and £250 in the case of negligence” there shall be substituted “£3,000”.
- (6) This section shall apply in relation to things done or omitted on or after the day on which this Act is passed.

#### Textual Amendments

**F11** S. 170(1) repealed (1.5.1995 with effect as mentioned in s. 39(4)(5) of the amending Act) by 1995 c. 4, s. 162, **Sch. 29 Pt. VIII(1)**, note

**F12** S. 170(2) repealed (16.7.1992 with effect in accordance with s. 32 of the repealing Act) by **Finance (No. 2) Act 1992 (c. 48)**, ss. 32, 82, **Sch. 18 Pt. VII(4)**



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**Marginal Citations**

**M31** 1973 c. 51.

**Status:**

Point in time view as at 02/07/2002.

**Changes to legislation:**

There are currently no known outstanding effects for the Finance Act 1989, CHAPTER IV.