

Status: Point in time view as at 31/07/1998.

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SCHEDULES

SCHEDULE 19

MANAGEMENT: OTHER AMENDMENTS

PART I

AMENDMENTS OF MANAGEMENT ACT

Notice of liability to income tax and capital gains tax

- 1 (1) For section 7 of the Management Act there shall be substituted the following section—

“7 Notice of liability to income tax and capital gains tax.

- (1) Every person who—
- (a) is chargeable to income tax or capital gains tax for any year of assessment, and
 - (b) has not received a notice under section 8 of this Act requiring a return for that year of his total income and chargeable gains,
- shall, subject to subsection (3) below, within six months from the end of that year, give notice to an officer of the Board that he is so chargeable.
- (2) In the case of a person who is chargeable as mentioned in subsection (1) above as a trustee of a settlement, that subsection shall have effect as if the reference to a notice under section 8 of this Act were a reference to a notice under section 8A of this Act.
- (3) A person shall not be required to give notice under subsection (1) above in respect of a year of assessment if for that year his total income consists of income from sources falling within subsections (4) to (7) below and he has no chargeable gains.
- (4) A source of income falls within this subsection in relation to a year of assessment if—
- (a) all payments of, or on account of, income from it during that year, and
 - (b) all income from it for that year which does not consist of payments, have or has been taken into account in the making of deductions or repayments of tax under section 203 of the principal Act.
- (5) A source of income falls within this subsection in relation to any person and any year of assessment if all income from it for that year has been or will be taken into account—
- (a) in determining that person’s liability to tax, or

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- (b) in the making of deductions or repayments of tax under section 203 of the principal Act.
- (6) A source of income falls within this subsection in relation to any person and any year of assessment if all income from it for that year is—
 - (a) income from which income tax has been deducted;
 - (b) income from or on which income tax is treated as having been deducted or paid; or
 - (c) income chargeable under Schedule F,
 and that person is not for that year liable to tax at a rate other than the basic rate or the lower rate.
- (7) A source of income falls within this subsection in relation to any person and any year of assessment if all income from it for that year is income from which he could not become liable to tax under a self-assessment made under section 9 of this Act in respect of that year.
- (8) If any person, for any year of assessment, fails to comply with subsection (1) above, he shall be liable to a penalty not exceeding the amount of the tax—
 - (a) in which he is assessed under section 9 or 29 of this Act in respect of that year, and
 - (b) which is not paid on or before the 31st January next following that year.”
- (2) This paragraph has effect as respects the year 1995-96 and subsequent years of assessment.

European Economic Interest Groupings

- 2 In subsection (2) of section 12A of the Management Act (European Economic Interest Groupings), for the words “making assessments to income tax, corporation tax and capital gains tax on members of a grouping” there shall be substituted the words “securing that members of a grouping are assessed to income tax and capital gains tax or (as the case may be) corporation tax ”.

Records for purposes of returns

- 3 After section 12A of the Management Act there shall be inserted the following section—

“ Records

12B Records to be kept for purposes of returns.

- (1) Any person who may be required by a notice under section 8, 8A, 11 or 12AA of this Act (or under any of those sections as extended by section 12 of this Act) to make and deliver a return for a year of assessment or other period shall—
 - (a) keep all such records as may be requisite for the purpose of enabling him to make and deliver a correct and complete return for the year or period; and

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- (b) preserve those records until the end of whichever of the following is the later, namely—
 - (i) the day mentioned in subsection (2) below; and
 - (ii) where a return delivered by him is enquired into by an officer of the Board, the day on which, by virtue of section 28A(5) or 28B(5) of this Act, the officer’s enquiries are treated as completed.
- (2) The day referred to in subsection (1) above is—
 - (a) in the case of a person carrying on a trade, profession or business alone or in partnership or a company, the fifth anniversary of the 31st January next following the year of assessment or (as the case may be) the sixth anniversary of the end of the period;
 - (b) in any other case, the first anniversary of the 31st January next following the year of assessment or, where a return is delivered by the person concerned after that date, the quarter day next following the first anniversary of the day on which the return is delivered;and the quarter days for the purposes of this subsection are 31st January, 30th April, 31st July and 31st October.
- (3) In the case of a person carrying on a trade, profession or business alone or in partnership—
 - (a) the records required to be kept and preserved under subsection (1) above shall include records of the following, namely—
 - (i) all amounts received and expended in the course of the trade, profession or business and the matters in respect of which the receipts and expenditure take place, and
 - (ii) in the case of a trade involving dealing in goods, all sales and purchases of goods made in the course of the trade; and
 - (b) the duty under that subsection shall include a duty to preserve until the day mentioned in subsection (2) above all supporting documents relating to such items as are mentioned in paragraph (a)(i) or (ii) above.
- (4) The duty under subsection (1) above to preserve records may be discharged by the preservation of the information contained in them; and where information is so preserved a copy of any document forming part of the records shall be admissible in evidence in any proceedings before the Commissioners to the same extent as the records themselves.
- (5) Any person who fails to comply with subsection (1) above in relation to a year of assessment or accounting period shall be liable to a penalty not exceeding £3,000.
- (6) For the purposes of this section—
 - (a) a person engaged in the letting of property shall be treated as carrying on a trade; and
 - (b) “supporting documents” includes accounts, books, deeds, contracts, vouchers and receipts.”

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Recovery of overpayment of tax etc.

- 4 (1) After subsection (1A) of section 30 of the Management Act (recovery of overpayment of tax etc.) there shall be inserted the following subsection—

“(1B) Subsections (2) to (8) of section 29 of this Act shall apply in relation to an assessment under subsection (1) above as they apply in relation to an assessment under subsection (1) of that section; and subsection (4) of that section as so applied shall have effect as if the reference to the loss of tax were a reference to the repayment of the amount of tax which ought not to have been repaid.”

- (2) For subsection (5) of that section there shall be substituted the following subsection—

“(5) An assessment under this section shall not be out of time under section 34 of this Act if it is made before the end of whichever of the following ends the later, namely—

- (a) the chargeable period following that in which the amount assessed was repaid or paid as the case may be, or
- (b) where a return delivered by the person concerned, or an amendment of such a return, is enquired into by an officer of the Board, the period ending with the day on which, by virtue of section 28A(5) of this Act, the officer’s enquiries are treated as completed.”

Assessing procedure

- 5 (1) After section 30 of the Management Act there shall be inserted the following section—

“**30A Assessing procedure.**

- (1) Except as otherwise provided, all assessments to tax which are not self-assessments shall be made by an officer of the Board.
 - (2) All income tax which falls to be charged by an assessment which is not a self-assessment may, notwithstanding that it was chargeable under more than one Schedule, be included in one assessment.
 - (3) Notice of any such assessment shall be served on the person assessed and shall state the date on which it is issued and the time within which any appeal against the assessment may be made.
 - (4) After the notice of any such assessment has been served on the person assessed, the assessment shall not be altered except in accordance with the express provisions of the Taxes Acts.
 - (5) Assessments to tax which under any provision in the Taxes Acts are to be made by the Board shall be made in accordance with this section.”
- (2) This paragraph, so far as it relates to partnerships whose trades, professions or businesses are set up and commenced before 6th April 1994, has effect as respects the year 1997-98 and subsequent years of assessment.

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Amendment of partnership statement where loss of tax discovered

6 After section 30A of the Management Act there shall be inserted the following section—

“30B Amendment of partnership statement where loss of tax discovered.

(1) Where an officer of the Board or the Board discover, as regards a partnership statement made by any person (the representative partner) in respect of any period—

- (a) that any profits which ought to have been included in the statement have not been so included, or
- (b) that an amount of profits so included is or has become insufficient, or
- (c) that any relief claimed by the representative partner is or has become excessive,

the officer or, as the case may be, the Board may, subject to subsections (3) and (4) below, by notice to that partner so amend the statement as to make good the omission or deficiency or eliminate the excess.

(2) Where a partnership statement is amended under subsection (1) above, the officer shall by notice to each of the relevant partners so amend their self-assessments under section 9 or 11AA of this Act as to give effect to the amendments of the partnership statement.

(3) Where the situation mentioned in subsection (1) above is attributable to an error or mistake as to the basis on which the partnership statement was made, no amendment shall be made under that subsection if that statement was in fact made on the basis or in accordance with the practice generally prevailing at the time when it was made.

(4) No amendment shall be made under subsection (1) above unless one of the two conditions mentioned below is fulfilled.

(5) The first condition is that the situation mentioned in subsection (1) above is attributable to fraudulent or negligent conduct on the part of—

- (a) the representative partner or a person acting on his behalf, or
- (b) a relevant partner or a person acting on behalf of such a partner.

(6) The second condition is that at the time when an officer of the Board—

- (a) ceased to be entitled to give notice of his intention to enquire into the representative partner’s return under section 12AA of this Act; or
- (b) informed that partner that he had completed his enquiries into that return,

the officer could not have been reasonably expected, on the basis of the information made available to him before that time, to be aware of the situation mentioned in subsection (1) above.

(7) Subsections (6) and (7) of section 29 of this Act apply for the purposes of subsection (6) above as they apply for the purposes of subsection (5) of that section; and those subsections as so applied shall have effect as if—

- (a) any reference to the taxpayer were a reference to the representative partner;

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- (b) any reference to the taxpayer’s return under section 8, 8A or 11 were a reference to the representative partner’s return under section 12AA of this Act; and
 - (c) sub-paragraph (ii) of paragraph (a) of subsection (7) were omitted.
- (8) An objection to the making of an amendment under subsection (1) above on the ground that neither of the two conditions mentioned above is fulfilled shall not be made otherwise than on an appeal against the amendment.
- (9) In this section—
- “profits” has the same meaning as in section 29 of this Act;
 - “relevant partner” means a person who was a partner at any time during the period in respect of which the partnership statement was made.
- (10) Any reference in this section to the representative partner includes, unless the context otherwise requires, a reference to any successor of his.”

Right of appeal

7 For subsections (1) to (3) of section 31 of the Management Act (right of appeal) there shall be substituted the following subsections—

- “(1) Subject to subsection (1A) below, an appeal may be brought against—
- (a) an amendment under section 28A(2) or (4) of this Act of a self-assessment, or
 - (b) an amendment under section 28B(3) or 30B(1) of this Act of a partnership statement, or
 - (c) an assessment to tax which is not a self-assessment,
- by a notice of appeal in writing given within 30 days after the date on which the notice of amendment or assessment was issued.
- (1A) An appeal against an amendment under subsection (2) of section 28A of this Act of a self-assessment shall not be heard and determined before the officer who made the amendment gives notice under subsection (5) of that section that he has completed his enquiries.
- (2) The notice of appeal shall be given to the officer of the Board by whom the notice of amendment or assessment was given.
- (3) The appeal shall be to the Special Commissioners if—
- (a) the appeal involves any question of the application of any of [F1sections 660A to 660G or 677 to 682A] and 695 to 702 of the principal Act, or
 - (b) in the case of an appeal against an assessment, the assessment was made by the Board.”

Textual Amendments

F1 Sch. 19 para. 7: Words in the s. 31(3) proposed to be substituted in 1970 c. 9 substituted (1.5.1995 with effect as mentioned in s. 74(2) of the amending Act) by 1995 c. 4, s. 74, Sch. 17 para. 22

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Error or mistake

8 ^{F2}(1)

(2) The proviso to subsection (2) of that section shall cease to have effect and after that subsection there shall be inserted the following subsection—

“(2A) No relief shall be given under this section in respect of—

- (a) an error or mistake as to the basis on which the liability of the claimant ought to have been computed where the return was in fact made on the basis or in accordance with the practice generally prevailing at the time when it was made; or
- (b) an error or mistake in a claim which is included in the return.”

Textual Amendments

F2 Sch. 19 para. 8(1) repealed (31.7.1998 with effect as mentioned in the Note to Sch. 27 Pt. III(28) of the repealing Act) by 1998 c. 38, s. 165, Sch. 27 Pt. III(28)

9 After section 33 of the Management Act there shall be inserted the following section—

“33A Error or mistake in partnership statement.

- (1) This section applies where, in the case of a trade, profession or business carried on by two or more persons in partnership, those persons allege that the tax charged by self-assessments of theirs under section 9 or 11AA of this Act was excessive by reason of some error or mistake in a partnership statement.
- (2) One of those persons (the representative partner) may, not later than five years after the filing date, by notice in writing make a claim to the Board for relief.
- (3) On receiving the claim the Board shall inquire into the matter and shall, subject to subsection (5) below, so amend the partnership statement so as to give such relief in respect of the error or mistake as is reasonable or just.
- (4) Where a partnership statement is amended under subsection (3) above, the Board shall by notice to each of the relevant partners so amend their self-assessments under section 9 or 11AA of this Act as to give effect to the amendment of the partnership statement.
- (5) No relief shall be given under this section in respect of an error or mistake as to the basis on which the liability of the partners ought to have been computed where the partnership statement was in fact made on the basis or in accordance with the practice generally prevailing at the time when it was made.
- (6) In determining the claim the Board—
 - (a) shall have regard to all the relevant circumstances of the case, and
 - (b) in particular shall consider whether the granting of relief would result in the exclusion from charge to tax of any part of the profits of any of the partners;

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and for the purposes of this subsection the Board may take into consideration the liability of the partners and their self-assessments in respect of chargeable periods other than that to which the claim relates.

- (7) If any appeal is brought from the decision of the Board on the claim, the Special Commissioners shall hear and determine the appeal in accordance with the principles to be followed by the Board in determining claims under this section.
- (8) Neither the representative partner nor the Board shall be entitled to require a case to be stated under section 56 of this Act otherwise than on a point of law arising in connection with the computation of profits.
- (9) In this section—
 “filing date” has the same meaning as in section 12AC of this Act;
 “profits” has the same meaning as in section 33 of this Act;
 “relevant partner” means a person who was a partner at any time during the period in respect of which the partnership statement was made.
- (10) Any reference in this section to the representative partner includes, unless the context otherwise requires, a reference to any successor of his.”

Time limits for assessments

F³10

Textual Amendments

F3 Sch. 19 para. 10 repealed (31.7.1998 with effect as mentioned in the Note to Sch. 27 Pt. III(28) of the repealing Act) by 1998 c. 36, s. 165, Sch. 27 Pt. III(28)

- 11 (1) In subsection (1) of section 36 of the Management Act (fraudulent or negligent conduct), for the words from “twenty years” to the end there shall be substituted the words—
 “(a) in the case of an assessment to income tax or capital gains tax, twenty years after the 31st January next following the year of assessment to which it relates; and
 (b) in the case of an assessment to corporation tax, twenty-one years after the end of the accounting period to which it relates.”
- (2) For subsection (2) of that section there shall be substituted the following subsection—
 “(2) Where the person in default carried on a trade, profession or business with one or more other persons at any time in the period for which the assessment is made, an assessment in respect of the profits or gains of the trade, profession or business for the purpose mentioned in subsection (1) above may be made not only on the person in default but also on his partner or any of his partners.”
- 12 In subsections (1) and (2) of section 40 of the Management Act (assessments on personal representatives), for the words “the third year next following the year

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of assessment” there shall be substituted the words “ the period of three years beginning with the 31st January next following the year of assessment ”.

Claims etc.

13 For section 42 of the Management Act there shall be substituted the following section—

“42 Procedure for making claims etc.

- (1) Where any provision of the Taxes Acts provides for relief to be given, or any other thing to be done, on the making of a claim, this section shall, unless otherwise provided, have effect in relation to the claim.
- (2) Subject to subsection (3) below, where notice has been given under section 8, 8A, 11 or 12AA of this Act, a claim shall not at any time be made otherwise than by being included in a return under that section if it could, at that or any subsequent time, be made by being so included.
- (3) Subsection (2) above shall not apply in relation to any claim which falls to be taken into account in the making of deductions or repayments of tax under section 203 of the principal Act.
- (4) A claim made by a company for payment of a tax credit shall be made by being included in a return under section 11 of this Act.
- (5) The references in subsections (2) and (4) above to a claim being included in a return include references to a claim being so included by virtue of an amendment of the return; and the reference in subsection (4) above to a claim for payment includes a reference to a claim resulting in payment.
- (6) In the case of a trade, profession or business carried on by persons in partnership, a claim under any of the provisions mentioned in subsection (7) below shall be made—
 - (a) where subsection (2) above applies, by being included in a return under section 12AA of this Act, and
 - (b) in any other case, by such one of those persons as may be nominated by them for the purpose.
- (7) The provisions are—
 - (a) sections 84, 91B, 101(2), 120(2), 401, 471, 472, 484, 504, 531, 534, 535, 537A, 538, 570, 571(4), 579(4), 723(3), 732(4), 810 of, and paragraphs 2, 6 and 11 of Schedule 5 to, the principal Act;
 - (b) section 43(5) of the Finance Act 1989;
 - (c) sections 1, 11, 17, 22, 23, 24, 25, 30, 31, 33, 37, 48, 49, 53, 55, 68(5), 68(9), 77, 78, 124A, 129(2), 140(3), 141 and 158 of the Capital Allowances Act 1990; and
 - (d) sections 41 and 42 of the Finance (No. 2) Act 1992.
- (8) A claim may be made on behalf of an incapacitated person by his trustee, guardian, tutor or curator; and a person who under Part VIII of this Act has been charged with tax on the profits of another person may make any such claim for relief by discharge or repayment of that tax.

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- (9) Where a claim has been made (whether by being included in a return under section 8, 8A, 11 or 12AA of this Act or otherwise) and the claimant subsequently discovers that an error or mistake has been made in the claim, the claimant may make a supplementary claim within the time allowed for making the original claim.
- (10) This section shall apply in relation to any elections and notices as it applies in relation to claims.
- (11) Schedule 1A to this Act shall apply as respects any claim, election or notice which—
 - (a) is made otherwise than by being included in a return under section 8, 8A, 11 or 12AA of this Act, and
 - (b) does not fall to be taken into account in the making of deductions or repayments of tax under section 203 of the principal Act.
- (12) Schedule 2 to this Act shall have effect as respects the Commissioners to whom an appeal lies under Schedule 1A to this Act.
- (13) In this section “profits”—
 - (a) in relation to income tax, means income,
 - (b) in relation to capital gains tax, means chargeable gains, and
 - (c) in relation to corporation tax, means profits as computed for the purposes of that tax.”

F⁴14

Textual Amendments

F4 Sch. 19 para. 14 repealed (31.7.1998 with effect as mentioned in the Note to Sch. 27 Pt. III(28) of the repealing Act) by 1998 c. 36, s. 165, Sch. 27 Pt. III(28)

F⁵15

Textual Amendments

F5 Sch. 19 para. 15 repealed (31.7.1998 with effect as mentioned in the Note to Sch. 27 Pt. III(28) of the repealing Act) by 1998 c. 36, s. 165, Sch. 27 Pt. III(28)

Determination of Commissioners

F⁶16

Textual Amendments

F6 Sch. 19 para. 16 repealed (31.7.1998 with effect as mentioned in the Note to Sch. 27 Pt. III(28) of the repealing Act) by 1998 c. 36, s. 165, Sch. 27 Pt. III(28)

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Procedure on appeal

17 (1) For subsections (6) and (7) of section 50 of the Management Act (procedure on appeal) there shall be substituted the following subsections—

“(6) If, on an appeal, it appears to the majority of the Commissioners present at the hearing, by examination of the appellant on oath or affirmation, or by other^{F7} . . . evidence—

- (a) that, by reason of an amendment under section 28A(2) or (4) of this Act, the appellant is overcharged by a self-assessment;
- (b) that, by reason of an amendment under section 28B(3) or 30B(1) of this Act, any amounts contained in a partnership statement are excessive; or
- (c) that the appellant is overcharged by an assessment other than a self-assessment,

the assessment or amounts shall be reduced accordingly, but otherwise the assessment or statement shall stand good.

(7) If, on an appeal, it appears to the Commissioners—

- (a) that the appellant is undercharged to tax by a self-assessment which has been amended under section 28A(2) or (4) of this Act;
- (b) that any amounts contained in a partnership statement which has been amended under section 28B(3) or 30B(1) of this Act are insufficient; or
- (c) that the appellant is undercharged by an assessment other than a self-assessment,

the assessment or amounts shall be increased accordingly.”

(2) In subsection (8) of that section, after the words “an assessment” there shall be inserted the words “ (other than a self-assessment) ”.

^{F8}(3)

Textual Amendments

- F7** Word in [Sch. 19 para. 17\(1\)](#) repealed (1.9.1994) by [S.I. 1994/1813, reg. 2, Sch. 1 para. 25\(b\)](#), [Sch. 2 Pt. I](#)
- F8** [Sch. 19 para. 17\(3\)](#) repealed (31.7.1998 with effect as mentioned in the Note to [Sch. 27 Pt. III\(28\)](#) of the repealing Act) by [1998 c. 36, s. 165, Sch. 27 Pt. III\(28\)](#)

Postponement of tax pending appeal

18 (1) For subsection (1) of section 55 of the Management Act there shall be substituted the following subsection—

“(1) This section applies to an appeal to the Commissioners against—

- (a) an amendment made under section 28A(2) or (4) of this Act of a self-assessment,
- (b) an assessment to tax made under section 29 of this Act,
- (c) an assessment to income tax made under Schedule 16 to the principal Act (income tax on company payments) other than an assessment charging tax the time for the payment of which is given by paragraph 4(1) or 9 of that Schedule, or

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- (d) a notice under subsection (1) or (3) of section 753 of that Act where, before the appeal is determined, the appellant is assessed to tax under section 747(4)(a) of that Act by reference to an amount of chargeable profits specified in that notice.”
- (2) In the following provisions of that section, for the word “assessment”, in each place where it occurs, there shall be substituted the words “ amendment or assessment ”.

Collection and recovery

^{F9}19

Textual Amendments

F9 Sch. 19 para. 19 repealed (31.7.1998 with effect as mentioned in the Note to Sch. 27 Pt. III(28) of the repealing Act) by 1998 c. 36, s. 165, Sch. 27 Pt. III(28)

- 20 In section 69 of the Management Act (collection of interest on tax)—
- (a) for the words “Interest charged under Part IX of this Act” there shall be substituted the words “ A penalty imposed under Part II, VA or X of this Act, a surcharge imposed under Part VA of this Act and interest charged under Part IX of this Act ”; and
- (b) for the words “if it is interest on tax” there shall be substituted the words “ if it is a penalty or surcharge imposed in respect of, or if it is interest on, tax ”.
- 21 (1) In subsection (2) of section 70 of the Management Act (evidence), for the words “that interest is payable” to “ another collector ” there shall be substituted the words—
- “(a) that a penalty is payable under Part II, VA or X of this Act, that a surcharge is payable under Part VA of this Act or that interest is payable under Part IX of this Act, and
- (b) that payment of the penalty, surcharge or 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.”.
- (2) Subsection (3) of that section shall cease to have effect.
- 22 (1) After section 70 of the Management Act there shall be inserted the following section—

“70A Payments by cheque.

- (1) For the purposes of this Act and the provisions mentioned in subsection (2) below, where—
- (a) any payment to an officer of the Board or the Board is made by cheque, and
- (b) the cheque is paid on its first presentation to the banker on whom it is drawn,
- the payment shall be treated as made on the day on which the cheque was received by the officer or the Board.

Status: Point in time view as at 31/07/1998.

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- (2) The provisions are—
- (a) sections 824 to 826 of the principal Act (repayment supplements and interest on tax overpaid); and
 - (b) section 283 of the 1992 Act (repayment supplements).”

(2) This paragraph has effect as respects cheques received on or after 6th April 1996.

Interest on overdue tax or tax recovered

F10 23

Textual Amendments

F10 Sch. 19 para. 23 repealed and superseded (29.4.1996 with effect in accordance with s. 121(8) of the repealing Act) by 1996 c. 8, ss. 131(3), 205(1)(2), Sch. 41 Pt. V(6), Note 3

24 In subsection (1) of section 87A of the Management Act (interest on overdue corporation tax etc.), for the words “section 10 of the principal Act” there shall be substituted the words “ section 59D of this Act ”.

Penalties

25 For section 93 of the Management Act there shall be substituted the following section—

“93 Failure to make return for income tax and capital gains tax.

- (1) This section applies where—
- (a) any person (the taxpayer) has been required by a notice served under or for the purposes of section 8 or 8A of this Act (or either of those sections as extended by section 12 of this Act) to deliver any return, and
 - (b) he fails to comply with the notice.

(2) The taxpayer shall be liable to a penalty which shall be £100.

(3) If, on an application made to them by an officer of the Board, the General or Special Commissioners so direct, the taxpayer shall be liable to a further penalty or penalties not exceeding £60 for each day on which the failure continues after the day on which he is notified of the direction (but excluding any day for which a penalty under this subsection has already been imposed).

- (4) If—
- (a) the failure by the taxpayer to comply with the notice continues after the end of the period of six months beginning with the filing date, and
 - (b) no application is made under subsection (3) above before the end of that period,
- the taxpayer shall be liable to a further penalty which shall be £100.

(5) Without prejudice to any penalties under subsections (2) to (4) above, if—

Status: Point in time view as at 31/07/1998.

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- (a) the failure by the taxpayer to comply with the notice continues after the anniversary of the filing date, and
 - (b) there would have been a liability to tax shown in the return,
- the taxpayer shall be liable to a penalty of an amount not exceeding the liability to tax which would have been so shown.
- (6) No penalty shall be imposed under subsection (3) above in respect of a failure at any time after the failure has been remedied.
 - (7) If the taxpayer proves that the liability to tax shown in the return would not have exceeded a particular amount, the penalty under subsection (2) above, together with any penalty under subsection (4) above, shall not exceed that amount.
 - (8) On an appeal against the determination under section 100 of this Act of a penalty under subsection (2) or (4) above, neither section 50(6) to (8) nor section 100B(2) of this Act shall apply but the Commissioners may—
 - (a) if it appears to them that, throughout the period of default, the taxpayer had a reasonable excuse for not delivering the return, set the determination aside; or
 - (b) if it does not so appear to them, confirm the determination.
 - (9) References in this section to a liability to tax which would have been shown in the return are references to an amount which, if a proper return had been delivered on the filing date, would have been payable by the taxpayer under section 59B of this Act for the year of assessment.
 - (10) In this section—
 - “the filing date” means the day mentioned in section 8(1A) or, as the case may be, section 8A(1A) of this Act;
 - “the period of default”, in relation to any failure to deliver a return, means the period beginning with the filing date and ending with the day before that on which the return was delivered.”

26 After section 93 of the Management Act there shall be inserted the following section—

“93A Failure to make partnership return.

- (1) This section applies where, in the case of a trade, profession or business carried on by two or more persons in partnership—
 - (a) a partner (the representative partner) has been required by a notice served under or for the purposes of section 12AA(2) or (3) of this Act to deliver any return, and
 - (b) he fails to comply with the notice.
- (2) Each relevant partner shall be liable to a penalty which shall be £100.
- (3) If, on an application made to them by an officer of the Board, the General or Special Commissioners so direct, each relevant partner shall be liable, for each day on which the failure continues after the day on which the representative partner is notified of the direction (but excluding any day for which a penalty under this subsection has already been imposed), to a further penalty or penalties not exceeding £60.

Status: Point in time view as at 31/07/1998.

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- (4) If—
- (a) the failure by the representative partner to comply with the notice continues after the end of the period of six months beginning with the filing date, and
 - (b) no application is made under subsection (3) above before the end of that period,
- each relevant partner shall be liable to a further penalty which shall be £100.
- (5) No penalty shall be imposed under subsection (3) above in respect of a failure at any time after the failure has been remedied.
- (6) Where, in respect of the same failure to comply, penalties under subsection (2), (3) or (4) above are determined under section 100 of this Act as regards two or more relevant partners—
- (a) no appeal against the determination of any of those penalties shall be brought otherwise than by the representative partner;
 - (b) any appeal by that partner shall be a composite appeal against the determination of each of those penalties; and
 - (c) section 100B(3) of this Act shall apply as if that partner were the person liable to each of those penalties.
- (7) On an appeal against a determination under section 100 of this Act of a penalty under subsection (2) or (4) above, neither section 50(6) to (8) nor section 100B(2) of this Act shall apply but the Commissioners may—
- (a) if it appears to them that, throughout the period of default, the representative partner had a reasonable excuse for not delivering the return, set the determination aside; or
 - (b) if it does not so appear to them, confirm the determination.
- (8) In this section—
- “the filing date” means the day specified in the notice under section 12AA(2) or (3) of this Act;
 - “the period of default”, in relation to any failure to deliver a return, means the period beginning with the filing date and ending with the day before that on which the return was delivered;
 - “relevant partner” means a person who was a partner at any time during the period in respect of which the return was required.”
- 27 (1) In subsection (1) of section 95 of the Management Act (incorrect return or accounts for income tax or capital gains tax), for the words “section 8 or 8A or 9 of this Act (or any of those sections” there shall be substituted the words “ section 8 or 8A of this Act (or either of those sections ”.
- (2) In subsection (3) of that section, the words from “and the references” to the end shall cease to have effect.
- 28 After section 95 of the Management Act there shall be inserted the following section—
- “95A Incorrect partnership return or accounts.**
- (1) This section applies where, in the case of a trade, profession or business carried on by two or more persons in partnership—

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- (a) a partner (the representative partner)—
 - (i) delivers an incorrect return of a kind mentioned in section 12AA of this Act, or
 - (ii) makes any incorrect statement or declaration in connection with such a return, or
 - (iii) submits to an officer of the Board any incorrect accounts in connection with such a return, and
 - (b) either he does so fraudulently or negligently, or his doing so is attributable to fraudulent or negligent conduct on the part of a relevant partner.
- (2) Each relevant partner shall be liable to a penalty not exceeding the difference between—
- (a) the amount of income tax or corporation tax payable by him for the relevant period (including any amount of income tax deducted at source and not repayable), and
 - (b) the amount which would have been the amount so payable if the return, statement, declaration or accounts made or submitted by the representative partner had been correct;
- and in determining each such penalty, regard shall be had only to the fraud or negligence, or the fraudulent or negligent conduct, mentioned in subsection (1)(b) above.
- (3) Where, in respect of the same return, statement, declaration or accounts, penalties under subsection (2) above are determined under section 100 of this Act as regards two or more relevant partners—
- (a) no appeal against the determination of any of those penalties shall be brought otherwise than by the representative partner;
 - (b) any appeal by that partner shall be a composite appeal against the determination of each of those penalties; and
 - (c) section 100B(3) of this Act shall apply as if that partner were the person liable to each of those penalties.
- (4) In this section—
- “relevant partner” means a person who was a partner at any time during the relevant period;
 - “relevant period” means the period in respect of which the return was made.”

29 After section 97 of the Management Act there shall be inserted the following section—

“97AA Failure to produce documents under section 19A.

- (1) Where a person fails to comply with a notice or requirement under section 19A(2) or (3) of this Act, he shall be liable, subject to subsection (4) below—
 - (a) to a penalty which shall be £50, and
 - (b) if the failure continues after a penalty is imposed under paragraph (a) above, to a further penalty or penalties not exceeding the relevant amount for each day on which the failure continues after the day on which the penalty under that paragraph was imposed (but excluding

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any day for which a penalty under this paragraph has already been imposed).

- (2) In subsection (1)(b) above “the relevant amount” means—
- (a) in the case of a determination of a penalty by an officer of the Board under section 100 of this Act, £30;
 - (b) in the case of a determination of a penalty by the Commissioners under section 100C of this Act, £150.

(3) An officer of the Board authorised by the Board for the purposes of section 100C of this Act may commence proceedings under that section for any penalty under subsection (1)(b) above, notwithstanding that it is not a penalty to which subsection (1) of section 100 of this Act does not apply by virtue of subsection (2) of that section.

(4) No penalty shall be imposed under subsection (1) above in respect of a failure within that subsection at any time after the failure has been remedied.”

30 (1) For subsection (2) of section 98B of the Management Act (European Economic Interest Groupings) there shall be substituted the following subsections—

“(2) Subsections (2A) to (4) below apply where a grouping or member of a grouping required by a notice given under section 12A of this Act to deliver a return or other document fails to comply with the notice.

(2A) The grouping or member shall be liable to a penalty not exceeding £300 multiplied by the number of members of the grouping at the time of the failure to comply.

(2B) If, on an application made to them by an officer of the Board, the General or Special Commissioners so direct, the grouping or member shall be liable, for each day on which the failure continues after the day on which the grouping or member is notified of the direction (but excluding any day for which a penalty under this subsection has already been imposed), to a further penalty or penalties not exceeding £60 multiplied by the number of members of the grouping at the end of that day.”

(2) In subsection (3) of that section, for the words “subsection (2)” there shall be substituted the words “ subsection (2A) or (2B) ”.

(3) In subsection (4) of that section, for the words “subsection (2)” there shall be substituted the words “ subsections (2A) and (2B) ”.

31 (1) In subsection (1) of section 100B of the Management Act (appeals against penalty determinations), after the words “subject to” there shall be inserted the words “ sections 93, 93A and 95A of this Act ”.

(2) At the beginning of subsection (2) of that section there shall be inserted the words “ Subject to sections 93(8) and 93A(7) of this Act ”.

32 In subsection (2) of section 103 of the Management Act (time limit for penalties), for the words “the end of the chargeable period” there shall be substituted the words “ the 31st January next following the chargeable period ”.

33 After section 103 of the Management Act there shall be inserted the following section—

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“103A Interest on penalties.

A penalty under any of the provisions of Part II or VA or this Part of this Act shall carry interest at the rate applicable under section 178 of the Finance Act 1989 from the date on which it becomes due and payable until payment.”

Interpretation

- 34 (1) In subsection (1) of section 118 of the Management Act (interpretation), after the definition of [F11“the Special Commissioners Regulations”] there shall be inserted the following definitions—
- ““successor”, in relation to a person who has made and delivered a return under section 12AA of this Act, and “predecessor” and “successor”, in relation to the successor of such a person, shall be construed in accordance with section 12AC(6) of this Act;”.
- (2) Subsection (3) of that section (effect of assessments in partnership name) shall cease to have effect.
- (3) Sub-paragraph (2) above, so far as it relates to partnerships whose trades, professions or businesses are set up and commenced before 6th April 1994, has effect as respects the year 1997-98 and subsequent years of assessment.

Textual Amendments

F11 Words in [Sch. 19 para.34\(1\)](#) substituted (1.9.1994) by [S.I. 1994/1813, reg. 2\(1\)](#), [Sch. 1 para. 25\(c\)](#)

Claims etc. not included in returns

- 35 After Schedule 1 to the Management Act there shall be inserted the following Schedule—

“SCHEDULE 1A

CLAIMS ETC. NOT INCLUDED IN RETURNS

Preliminary

- 1 In this Schedule—
- “claim” means a claim, election or notice as respects which this Schedule applies;
- “partnership claim” means a claim made in accordance with section 42(6)(b) of this Act;
- “profits” has the same meaning as in section 42 of this Act;
- “relevant partner”, in relation to a partnership claim, means any person who was a partner at any time during the period in respect of which the claim is made;
- “successor”, in relation to a person who—
- has made a partnership claim, but
 - is no longer a partner or is otherwise no longer available,

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means such other partner who may at any time be nominated for the purposes of this paragraph by the majority of the partners at that time, and “predecessor” and “successor”, in relation to a person so nominated, shall be construed accordingly.

Making of claims

- 2 (1) Subject to any provision in the Taxes Acts for a claim to be made to the Board, every claim shall be made to an officer of the Board.
- (2) No claim requiring the repayment of tax shall be made unless the claimant has documentary proof that the tax has been paid by deduction or otherwise.
- (3) A claim shall be made in such form as the Board may determine.
- (4) The form of claim shall provide for a declaration to the effect that all the particulars given in the form are correctly stated to the best of the information and belief of the person making the claim.
- (5) The form of claim may require—
 - (a) a statement of the amount of tax which will be required to be discharged or repaid in order to give effect to the claim;
 - (b) a return of profits to be made in support of the claim; and
 - (c) any such particulars of assets acquired as may be required in a return by virtue of section 12 of this Act.
- (6) In the case of a claim made by or on behalf of a person who is not resident, or who claims to be not resident or not ordinarily resident or not domiciled, in the United Kingdom, an officer of the Board or the Board may require a statement or declaration in support of the claim to be made by affidavit.

Amendments of claims

- 3 (1) Subject to sub-paragraph (2) below—
 - (a) at any time before the end of the period of nine months beginning with the day on which a claim is made, an officer of the Board may by notice to the claimant so amend the claim as to correct any obvious errors or mistakes in the return (whether errors of principle, arithmetical mistakes or otherwise); and
 - (b) at any time before the end of the period of twelve months beginning with the day on which the claim is made, the claimant may amend his claim by notice to an officer of the Board.
- (2) No amendment of a claim may be made under sub-paragraph (1) above at any time during the period—
 - (a) beginning with the day on which an officer of the Board gives notice of his intention to enquire into the claim, and
 - (b) ending with the day on which the officer’s enquiries into the claim are completed.

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Giving effect to claims and amendments

- 4 (1) An officer of the Board or the Board shall, as soon as practicable after a claim other than a partnership claim is made, or such a claim is amended under paragraph 3 above, give effect to the claim or amendment by discharge or repayment of tax.
- (2) An officer of the Board or the Board shall, as soon as practicable after a partnership claim is made, or such a claim is amended under paragraph 3 above, give effect to the claim or amendment, as respects each of the relevant partners, by discharge or repayment of tax.

Power to enquire into claims

- 5 (1) An officer of the Board may enquire into—
- (a) a claim made by any person, or
 - (b) any amendment made by any person of a claim made by him,
- if, before the end of the period mentioned in sub-paragraph (2) below, he gives notice in writing of his intention to do so to that person or, in the case of a partnership claim, any successor of that person.
- (2) The period referred to in sub-paragraph (1) above is the period ending with the quarter day next following the first anniversary of the day on which the claim or amendment was made; and the quarter days for the purposes of this subsection are 31st January, 30th April, 31st July and 31st October.
- (3) A claim or amendment which has been enquired into under sub-paragraph (1) above shall not be the subject of a further notice under that sub-paragraph.

Power to call for documents for purposes of enquiries

- 6 (1) This paragraph applies where an officer of the Board gives notice under paragraph 5 above to any person (the claimant) of his intention to enquire into—
- (a) a claim made by the claimant, or
 - (b) any amendment made by the claimant of such a claim.
- (2) For the purpose of enquiring into the claim or amendment, the officer may at the same or any subsequent time by notice in writing require the claimant, within such time (which shall not be less than 30 days) as may be specified in the notice—
- (a) to produce to the officer such documents as are in the claimant's possession or power and as the officer may reasonably require for the purpose of determining whether and, if so, the extent to which the claim or amendment is incorrect, and
 - (b) to furnish the officer with such accounts or particulars as he may reasonably require for that purpose.
- (3) Subsections (3) to (11) of section 19A of this Act apply for the purposes of this paragraph as they apply for the purposes of that section; and

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those subsections as so applied shall have effect as if any reference to subsection (2) of that section were a reference to sub-paragraph (2) above.

- (4) Where this paragraph applies in relation to a partnership claim, any reference in this paragraph to the claimant includes a reference to any predecessor or successor of his.

Amendments of claims where enquiries made

- 7 (1) This paragraph applies where an officer of the Board gives notice under paragraph 5(1) above to any person (the claimant) of his intention to enquire into—
- (a) a claim made by the claimant, or
 - (b) any amendment made by the claimant of such a claim.
- (2) At any time in the period of 30 days beginning with the day on which the officer's enquiries are completed, the claimant may so amend his claim—
- (a) as to eliminate or make good any excess or deficiency which, on the basis of the conclusions stated in the officer's notice under sub-paragraph (4) below, is an excess or deficiency which could be made good or eliminated under sub-paragraph (3) below; or
 - (b) as to give effect to any amendments to the claim which he has notified to the officer.
- (3) If, at any time in the period of 30 days beginning immediately after the period mentioned in sub-paragraph (2) above, the officer is of opinion that—
- (a) the claimant's claim is excessive or insufficient, and
 - (b) in a case falling within sub-paragraph (1)(b) above, the excess or deficiency is attributable (wholly or partly) to the claimant's amendment,
- the officer may by notice to the claimant so amend the claim as to eliminate or make good the excess or deficiency or, where paragraph (b) above applies, so much of the excess or deficiency as is so attributable.
- (4) Subject to sub-paragraph (5) below, the officer's enquiries shall be treated as completed at such time as he by notice—
- (a) informs the claimant that he has completed his enquiries, and
 - (b) states his conclusions as to the amount which should be the amount of the claimant's claim.
- (5) Subsections (6) and (7) of section 28A of this Act apply for the purposes of sub-paragraph (4) above as they apply for the purposes of subsection (5) of that section.
- (6) Where this paragraph applies in relation to a partnership claim, any reference in this paragraph to the claimant includes a reference to any predecessor or successor of his.

Giving effect to such amendments

- 8 (1) An officer of the Board or the Board shall, within 30 days of a claim other than a partnership claim being amended under paragraph 7(2) or (3)

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above, give effect to the amendment by making such adjustment as may be necessary, whether—

- (a) by way of assessment on the claimant, or
 - (b) by discharge of tax or, on proof to the satisfaction of the officer or the Board that any tax has been paid by the claimant by deduction or otherwise, by repayment of tax.
- (2) An officer of the Board or the Board shall, within 30 days of a partnership claim being amended under paragraph 7(2) or (3) above, give effect to the amendment, as respects each of the relevant partners, by making such adjustment as may be necessary, whether—
- (a) by way of assessment on the partner, or
 - (b) by discharge of tax or, on proof to the satisfaction of the officer or the Board that any tax has been paid by the partner by deduction or otherwise, by repayment of tax.
- (3) An assessment made under sub-paragraph (1) or (2) above shall not be out of time if it is made within the time mentioned in that sub-paragraph.

Appeals against such amendments

- 9 (1) An appeal may be brought against an amendment made under paragraph 7(3) above by giving written notice to the officer within 30 days of the amendment being made.
- (2) Where, in the case of such an appeal, the issues arising include—
- (a) any question arising under section 278 of the principal Act (personal reliefs for non-residents);
 - (b) any question of residence, ordinary residence or domicile; or
 - (c) the question whether a fund is one to which section 615(3) of that Act applies (pension funds for service abroad),
- the time for bringing the appeal shall be three months from the making of the amendment under paragraph 7(3) above.
- (3) On an appeal under this paragraph, the Commissioners may vary the amendment appealed against whether or not the variation is to the advantage of the appellant.
- (4) Where an amendment made under paragraph 7(3) above is varied, whether by the Commissioners or by the order of any court, paragraph 8 above shall (with the necessary modifications) apply in relation to the variation as it applied in relation to the amendment.”

F1236

Textual Amendments

F12 Sch. 19 para. 36 repealed (29.4.1996 with effect in accordance with Sch. 22 of the repealing Act) by 1996 c. 8, s. 205(1)(2), Sch. 41 Pt. V(12), Note

Status:

Point in time view as at 31/07/1998.

Changes to legislation:

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