



# Income Tax Act 2007

## 2007 CHAPTER 3

### PART 13

#### TAX AVOIDANCE

### CHAPTER 1

#### TRANSACTIONS IN SECURITIES

#### *Appeals*

#### **705 Appeals against counteraction notices**

- (1) A person on whom a counteraction notice has been served may appeal to the Special Commissioners on the grounds that—
  - (a) section 684 (person liable to counteraction of income tax advantage) does not apply to the person in respect of the transaction or transactions in question, or
  - (b) the adjustments directed to be made are inappropriate.
- (2) Such an appeal may be made only by giving notice to the Commissioners for Her Majesty's Revenue and Customs within 30 days of the service of the counteraction notice.
- (3) On an appeal under this section the Special Commissioners may—
  - (a) affirm, vary or cancel the counteraction notice, or
  - (b) affirm, vary or quash an assessment made in accordance with the notice.
- (4) But the bringing of an appeal under this section (or a request for its rehearing under section 706) does not affect—
  - (a) the validity of the counteraction notice, or
  - (b) the validity of any other thing done under or in accordance with section 698 (counteraction notices),

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pending the determination of the proceedings.

#### **706 Rehearing by tribunal of appeal against counteraction notice**

- (1) The appellant or an officer of Revenue and Customs may, if dissatisfied with the determination of the Special Commissioners under section 705, require the appeal to be reheard by the tribunal appointed under section 704.
- (2) Such a request may be made only by giving notice to the Clerk to the Special Commissioners within 30 days after the determination.
- (3) If such a request is made—
  - (a) the Special Commissioners must transmit to the tribunal any document in their possession which was delivered to them for the purposes of the appeal, and
  - (b) the tribunal must rehear and determine the appeal.
- (4) The tribunal has the same powers in relation to the appeal as the Special Commissioners.
- (5) On the rehearing of an appeal under this section, the tribunal may—
  - (a) affirm, vary or cancel the counteraction notice, or
  - (b) affirm, vary or quash an assessment made in accordance with the notice.
- (6) The tribunal's determination is final and conclusive (but see sections 707 to 711).

#### **707 Statement of case by tribunal for opinion of High Court or Court of Session**

- (1) This section applies if the appellant or an officer of Revenue and Customs (“the dissatisfied party”) is dissatisfied with the tribunal's determination under section 706 on the rehearing of an appeal as being wrong in law.
- (2) The dissatisfied party may, within 30 days after the determination, by notice in writing require the tribunal to state and sign a case for the opinion of the High Court or in Scotland the Court of Session.
- (3) The dissatisfied party is entitled to have the case stated only on payment of a fee of £25 to the tribunal.
- (4) The case must set out the facts and the determination of the tribunal.
- (5) The dissatisfied party must—
  - (a) within 30 days after receiving the stated and signed case, transmit it to the High Court or in Scotland the Court of Session, and
  - (b) not later than transmitting the case, send to the other party—
    - (i) notice in writing that the case has been stated on the dissatisfied party's application, and
    - (ii) a copy of the case.
- (6) The statement of a case under this section does not affect—
  - (a) the validity of the counteraction notice, or
  - (b) the validity of any other thing done under or in accordance with section 698 (counteraction notices),
 pending the determination of the proceedings.

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- (7) In this section and sections 708 to 710 references to the Court of Session are references to the Court of Session sitting as the Court of Exchequer.

### **708 Cases before High Court or Court of Session**

- (1) The High Court or in Scotland the Court of Session must hear and determine any question of law arising on a case transmitted to the Court under section 707(5).
- (2) The Court may—
- (a) affirm, reverse or amend the determination in respect of which the case has been stated,
  - (b) remit the matter to the tribunal with the Court's opinion on it, or
  - (c) make such other order about the matter as it considers appropriate.
- (3) The Court may send the case back for amendment.
- (4) A case sent back for amendment must be amended accordingly, and judgment must be delivered after it has been amended.

### **709 Effect of appeals against tribunal's determination under section 706**

- (1) This section applies if the tribunal has made a determination under section 706 about an assessment and a case—
- (a) has been required to be stated about it under section 707(2), or
  - (b) is pending before the High Court or the Court of Session.
- (2) Income tax must be paid in accordance with the determination except so far as subsection (3) or (4) applies.
- (3) If the amount charged is reduced by the order or judgment of the Court, the overpaid tax must be refunded with such interest, if any, as the Court may allow.
- (4) If the amount charged is increased by the order or judgment, an officer of Revenue and Customs must issue the person assessed with a notice of the total amount payable in accordance with the order or judgment.
- (5) The tax undercharged is due and payable at the end of the period of 30 days beginning with the date on which the notice is issued.

### **710 Appeals from High Court or Court of Session**

- (1) In the case of a decision under section 708 of the High Court, an appeal lies to the Court of Appeal and from there to the Supreme Court.
- (2) But that is subject to subsection (3) and to Part 2 of the Administration of Justice Act 1969 (c. 58) (appeal from High Court to Supreme Court).
- (3) No appeal lies to the Supreme Court from the Court of Appeal except with the leave of the Court of Appeal or the Supreme Court.
- (4) In the case of a decision under section 708 of the Court of Session, an appeal lies to the Supreme Court.

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## **711 Proceedings in Northern Ireland**

- (1) A case which is stated by the tribunal under section 707 (statement of case by tribunal for opinion of High Court or Court of Session) in proceedings in Northern Ireland is a case for the opinion of the Court of Appeal in Northern Ireland.
- (2) The Income Tax Acts and TMA 1970 have effect as if—
  - (a) section 707 applied in relation to such proceedings with the omission of subsections (4) and (5), and
  - (b) that section and sections 708 and 709 applied in relation to such proceedings with the substitution of references to the Court of Appeal in Northern Ireland for references to the High Court.
- (3) The procedure relating to—
  - (a) transmitting the case to the Court of Appeal in Northern Ireland, and
  - (b) the hearing and determination of the case by that Court,is that for the time being in force in Northern Ireland as respects cases stated by a county court in exercise of its general jurisdiction.
- (4) An appeal lies from the Court of Appeal in Northern Ireland to the Supreme Court in accordance with section 42 of the Judicature (Northern Ireland) Act 1978 (c. 23).
- (5) If in proceedings in Northern Ireland an application is made for a case to be stated by the tribunal under section 707 as applied by this section, the case must be settled and sent to the applicant as soon after the application as is reasonably practicable.
- (6) In this section “proceedings in Northern Ireland” means proceedings as respects which the place given by the rules in Schedule 3 to TMA 1970 is in Northern Ireland.

**Status:**

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