



Finance (No.2) Act 1987

1987 CHAPTER 51

PART I

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER V

TAXES MANAGEMENT PROVISIONS

Company returns

82 Return of profits.

- (1) With respect to any notice served after the appointed day, section 11 of the Management Act (return of profits) shall be amended in accordance with this section.
- (2) In subsection (1) for the words from “within the time limited by the notice” to the end there shall be substituted “not later than the final day determined under subsection (4) below a return of the profits and losses of the company containing such information and accompanied by such accounts, statements and reports as, subject to subsection (6) below, may be required in pursuance of the notice.”
- (3) For subsection (2) there shall be substituted the following subsection—
 - “(2) A notice under this section may require a return of profits and losses arising in any period specified in the notice (in this subsection referred to as “the specified period”) but, if the specified period does not coincide with an accounting period of the company and the company is within the charge to corporation tax in the whole or some part of the specified period, then—
 - (a) if an accounting period of the company ends in or at the end of the specified period, the notice shall be taken to require a return for that accounting period or, if there is more than one, for each of them;

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- (b) if no accounting period of the company ends in or at the end of the specified period but there is a part of the specified period which does not fall within an accounting period of the company, the notice shall be taken to require a return for that part of the specified period; and
- (c) if the specified period begins in or at the beginning of an accounting period of the company and ends before the end of that period, the notice shall be of no effect and, accordingly, the company shall not be required to make any return pursuant to it.”

(4) For subsections (4) to (6) there shall be substituted the following subsections—

- “(4) Subject to subsection (5) below, the final day for the delivery of any return required by a notice under this section shall be whichever is the later of—
- (a) the first anniversary of the last day of the period to which the return relates;
 - (b) the first anniversary of the last day of that period of account of the company in which falls the last day of the accounting period (if any) to which the return relates; and
 - (c) the end of the period of three months beginning on the day following that on which the notice was served.
- (5) In paragraph (b) of subsection (4) above “period of account” has the same meaning as in the principal Act, but for the purposes of that paragraph the last day of a period of account which is longer than eighteen months shall be treated as the day on which expires the period of eighteen months beginning on the first day of the period of account.
- (6) In relation to a company which—
- (a) is resident in the United Kingdom throughout the period to which the return relates (in this subsection referred to as “the return period”); and
 - (b) is required under the Companies Act 1985 to prepare accounts for a period consisting of or including the return period,
- the reference to accounts in subsection (1) above is a reference only to such accounts, containing such particulars and having annexed to them such documents, as are required under that Act to be so prepared.
- (7) The statements which may be required in pursuance of a notice under this section include statements showing the amount of tax (if any) chargeable.
- (8) Different information, accounts, statements and reports may be required in pursuance of a notice under this section in relation to different descriptions of company or different descriptions of profits and losses; and, in particular, information may be so required with respect to tax recoverable by virtue of section 286 of the principal Act (loans to participators) as if it were corporation tax, to advance corporation tax and to corporation tax already paid.
- (9) In the application of this section to a company registered in Northern Ireland, references to the Companies Act 1985 shall be construed as references to the Companies (Northern Ireland) Order 1986.”

83 Failure to make return for corporation tax.

With respect to failures to deliver returns required by notices served under section 11 of the Management Act after the appointed day, for section 94 of that Act (failure to make return for corporation tax) there shall be substituted the following section—

“94 Failure to make return for corporation tax.

- (1) If a company has been required by a notice served under section 11 of this Act (or under that section as extended by section 12 of this Act) to deliver a return for any period (in this section referred to as “the return period”) and the company fails to make proper delivery of the return, then, subject to subsections (3) and (5) below, the company shall be liable to a penalty which,—
 - (a) if the return is delivered before the expiry of the period of three months beginning on the day following the final day for the delivery of the return, shall be £100; and
 - (b) in any other case, shall be £200.
- (2) In relation to a return required by such a notice as is referred to in subsection (1) above,—
 - (a) any reference in this section (however expressed) to the delivery of the return is a reference to its delivery together with the accompanying accounts, statements and reports referred to in section 11(1) of this Act; and
 - (b) any reference in this section to making proper delivery of the return is a reference to the delivery of the return on or before the day which (in accordance with section 11(4) of this Act) is the final day for the delivery of the return.
- (3) In a case where—
 - (a) a company is required to deliver a return for a return period, and
 - (b) the return period is a period for which, under the Companies Act 1985, the company is required to deliver accounts to the Registrar of Companies,the company shall not be liable to a penalty under subsection (1) above by reason of a failure to make proper delivery of the return if the return is delivered on or before the day which is the last day for the delivery to the Registrar of the accounts referred to in paragraph (b) above.
- (4) In the application of this section to a company registered in Northern Ireland, the reference in subsection (3) above to the Companies Act 1985 shall be construed as a reference to the Companies (Northern Ireland) Order 1986 and references to the Registrar of Companies shall be construed accordingly.
- (5) In any case where—
 - (a) a company is within the charge to corporation tax for three consecutive accounting periods, each of which is a return period, and
 - (b) at no time between the beginning of the first of those periods and the end of the last is the company outside the charge to corporation tax, and
 - (c) the company fails to make proper delivery of the return for the third of those periods, and

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- (d) the company was liable to a penalty under this section in respect of each of the first two of those periods,
- subsection (1) above shall have effect in relation to the failure referred to in paragraph (c) above as if for “£100” there were substituted “£500” and for “£200” there were substituted “£1,000”.
- (6) If a company which has been required as mentioned in subsection (1) above to deliver a return fails to deliver the return before the expiry of the period of eighteen months beginning on the day following the last day of the return period, then (without prejudice to any penalty under the preceding provisions of this section) the company shall be liable to a penalty which,—
- (a) if the return is delivered before the expiry of the period of two years beginning on the day following that last day, shall be 10 per cent. of the tax unpaid at the end of the eighteen months referred to above; and
- (b) in any other case, shall be 20 per cent. of the tax unpaid at the end of those eighteen months.
- (7) In subsection (6) above “the tax unpaid” at any time means the amount by which the corporation tax chargeable on the profits of the company for the return period which then remains unpaid exceeds any income tax borne by deduction from payments included in those profits.
- (8) In determining for the purposes of subsection (7) above how much of the corporation tax chargeable on the profits of a company for the return period remains unpaid at any time, no account shall be taken of the discharge of any liability for that tax which, pursuant to a claim under subsection (3) of section 85 of the Finance Act 1972, is attributable to an amount of surplus advance corporation tax, as defined in that subsection, unless it is a surplus for an accounting period ending not later than two years after the end of the return period.”

84 Assessment of amounts due by way of penalty.

- (1) Where it appears to the inspector or the Board that any person is liable to a penalty under any provision of section 94 of the Management Act, the amount appearing to be due may be assessed by the inspector or the Board as if it were tax; and, subject to the provisions of this section, the provisions of the Management Act and section 247 of the Taxes Act relating to the assessment and collection of tax shall have effect accordingly.
- (2) An amount assessed under this section by way of penalty shall be due at the end of the period of thirty days beginning with the date of the issue of the notice of assessment.
- (3) In any case where—
- (a) an assessment under this section relates to a penalty the amount of which falls to be determined under subsections (6) to (8) of section 94 of the Management Act, and
- (b) after the assessment has been made, it appears to the inspector or the Board that the amount which was taken into account in the making of the assessment as the tax unpaid (as defined in subsection (7) of that section) was incorrect,
- all such adjustments shall be made, whether by way of amending the assessment, making a further assessment, repayment or otherwise as may be necessary to take account of the correct amount.

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- (4) At the end of section 70 of the Management Act (evidential certificates) there shall be inserted the following subsection—
- “(5) Where an amount has been assessed by way of penalty under section 94 of this Act and either no appeal has been brought against that assessment or the amount assessed has been confirmed or varied on appeal,—
- (a) a certificate of an inspector or other officer of the Board that an amount is due by way of penalty under that section, and
- (b) a certificate of a collector that payment of that amount has not been made to him or, to the best of his knowledge and belief, to any other collector, or to a person acting on his behalf or on behalf of another collector,
- shall be sufficient evidence that the amount mentioned in the certificates 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.”
- (5) Where there is a failure to make proper delivery of a return, within the meaning of section 94 of the Management Act, an assessment of an amount due by way of penalty under any provision of that section may be made at any time within six years beginning on the day on which the failure began or, in the case of a penalty under subsection (6) of that section, at any later time within three years beginning at the time of the final determination of the amount which is the unpaid tax for the purposes of that subsection.
- (6) On an appeal against an assessment of an amount by way of penalty under section 94 of the Management Act, subsections (6) to (8) of section 50 of that Act shall not apply but the Commissioners—
- (a) may confirm the amount of the assessment or, if it appears to them that the amount assessed is greater or smaller than the penalty provided for under the said section 94, may reduce it or increase it to such an amount as is appropriate having regard to the provisions of that section; and
- (b) if it appears to them that no penalty has been incurred, may set the assessment aside.
- (7) Nothing in sections 34 to 40 (time limits) of the Management Act applies to an assessment made by virtue of this section and nothing in section 55 of that Act (recovery of tax not postponed) applies to an appeal against such an assessment.
- (8) Section 100 of the Management Act (procedure for recovery of penalties) shall not apply to a penalty under section 94 of that Act.
- (9) This section has effect with respect to penalties incurred after the appointed day.