

*Status: Point in time view as at 19/07/2011.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1996, SCHEDULE 22. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 22 **U.K.**

Section 136.

#### SELF-ASSESSMENT: APPEALS

##### *The Taxes Management Act 1970*

1 The <sup>M1</sup>Taxes Management Act 1970 shall be amended in accordance with paragraphs 2 to 10 below.

#### Marginal Citations

**M1** 1970 c. 9.

<sup>F1</sup>2 .....

#### Textual Amendments

**F1** Sch. 22 para. 2 omitted (1.4.2009) by virtue of Finance Act 2008 (c. 9), s. 113(2), Sch. 36 para. 92(e) (with Sch. 36 para. 38); S.I. 2009/404, art. 2 (with art. 12)

<sup>F2</sup>3 .....

#### Textual Amendments

**F2** Sch. 22 para. 3 repealed (11.5.2001 with effect as mentioned in Sch. 33 Pt. 2(13), Note of the amending Act) by 2001 c. 9, s. 110, Sch. 33 Pt. 2(13)

<sup>F3</sup>4 .....

#### Textual Amendments

**F3** Sch. 22 para. 4 repealed (11.5.2001 with effect as mentioned in Sch. 33 Pt. 2(13), Note of the amending Act) by 2001 c. 9, s. 110, Sch. 33 Pt. 2(13)

5 In section 33A (error or mistake in partnership statement), for subsection (8) there shall be substituted the following subsections—

“(8) Subject to subsection (8A) below, the determination of the Special Commissioners of an appeal under subsection (6) above shall be final and conclusive (notwithstanding any provision having effect by virtue of section 56B of this Act).

(8A) Subsection (8) above does not apply in relation to a point of law arising in connection with the computation of profits.”

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6 Section 42(12) and Schedule 2 (Commissioners to whom appeal lies where appeal is against amendment of claim not included in return) shall be omitted.

7 For section 47 there shall be substituted the following sections—

**“46B Questions to be determined by Special Commissioners.**

(1) In so far as the question in dispute on an appeal to which this section applies is a question which under this section is to be determined by the Special Commissioners, the question shall be determined by them.

(2) This section applies to—

- (a) an appeal against an amendment under section 28A(2) or (4) of this Act of a self-assessment;
- (b) an appeal against a decision contained in a notice under section 28A(4A) of this Act disallowing a claim or election in whole or in part;
- (c) an appeal against an amendment under section 28B(3) or 30B(1) of this Act of a partnership statement;
- (d) an appeal against an assessment to tax which is not a self-assessment;
- (e) an appeal against an amendment under paragraph 7(3) of Schedule 1A to this Act of a claim or election made otherwise than by being included in a return;
- (f) an appeal against a decision contained in a notice under paragraph 7(3A) of Schedule 1A to this Act disallowing in whole or in part a claim or election made otherwise than by being included in a return.

(3) Any question—

- (a) of the value of any shares or securities in a company resident in the United Kingdom, other than shares or securities quoted in The Stock Exchange Daily Official List, and
- (b) arising in relation to the taxation of chargeable gains (whether under capital gains tax or corporation tax) or in relation to a claim under the 1992 Act,

is a question to be determined by the Special Commissioners.

(4) Any question as to the application of any of the following provisions of the principal Act is a question to be determined by the Special Commissioners—

- (a) Chapter IA or IB of Part XV (settlements);
- (b) Part XVI (administration of estates);
- (c) sections 740 and 743(1) (liability in respect of transfer of assets abroad);
- (d) section 747(4)(a) (liability in respect of controlled foreign company).

(5) Any question as to the application of—

- (a) section 830 of the principal Act, or
- (b) section 276 of the 1992 Act,

(liability in relation to territorial sea and designated areas) is a question to be determined by the Special Commissioners.

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#### **46C Jurisdiction of Special Commissioners over certain claims included in returns.**

- (1) In so far as the question in dispute on an appeal to which this section applies concerns a claim made—
- (a) to the Board, or
  - (b) under any of the provisions of the principal Act listed in subsection (3) below,
- the question shall be determined by the Special Commissioners.
- (2) This section applies to—
- (a) an appeal against an amendment under section 28A(2) or (4) of this Act of a self-assessment;
  - (b) an appeal against an amendment under section 28B(3) or 30B(1) of this Act of a partnership statement.
- (3) The provisions of the principal Act mentioned in subsection (1) above are—
- (a) section 121(1) and (2) (management expenses of owner of mineral rights);
  - (b) sections 459 and 460 (exemption for certain friendly societies);
  - (c) section 467 (exemption for certain trade unions and employers' associations);
  - (d) sections 527, 534, 536 and 538 (reliefs in respect of royalties, copyright payments etc.);
  - (e) Chapter I of Part XVIII.

#### **46D Questions to be determined by Lands Tribunal.**

- (1) In so far as the question in dispute on an appeal to which this section applies—
- (a) is a question of the value of any land or of a lease of land, and
  - (b) arises in relation to the taxation of chargeable gains (whether under capital gains tax or corporation tax) or in relation to a claim under the 1992 Act,
- the question shall be determined by the relevant Lands Tribunal.
- (2) This section applies to—
- (a) an appeal against an amendment under section 28A(2) or (4) of this Act of a self-assessment;
  - (b) an appeal against a decision contained in a notice under section 28A(4A) of this Act disallowing a claim or election in whole or in part;
  - (c) an appeal against an amendment under section 28B(3) or 30B(1) of this Act of a partnership statement;
  - (d) an appeal against an assessment to tax which is not a self-assessment;
  - (e) an appeal against an amendment under paragraph 7(3) of Schedule 1A to this Act of a claim or election made otherwise than by being included in a return;

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- (f) an appeal against a decision contained in a notice under paragraph 7(3A) of Schedule 1A to this Act disallowing in whole or in part a claim or election made otherwise than by being included in a return.
- (3) In this section “the relevant Lands Tribunal” means—
- (a) in relation to land in England and Wales, the Lands Tribunal;
  - (b) in relation to land in Scotland, the Lands Tribunal for Scotland;
  - (c) in relation to land in Northern Ireland, the Lands Tribunal for Northern Ireland.”
- 8 In section 57(3)(c) (power to make regulations authorising conditional decisions where more than one tribunal is determining questions in the proceedings), for “section 47” there shall be substituted “ section 46B, 46C or 46D ”.
- 9 In Schedule 1A (claims not included in returns), after paragraph 9 there shall be inserted the following paragraphs—
- “10 An appeal against an amendment under paragraph 7(3) above of a claim made—
- (a) to the Board,
  - (b) under Part XVI of the principal Act (administration of estates), or
  - (c) under any of the provisions of the principal Act listed in section 46C(3) of this Act,
- shall be to the Special Commissioners.
- 11 (1) Subject to paragraph 10 above and the following provisions of this paragraph, an appeal under paragraph 9(1) above shall be to the General Commissioners.
- (2) The appellant may elect (in accordance with section 46(1) of this Act) to bring the appeal before the Special Commissioners.
- (3) Such an election shall be disregarded if—
- (a) the appellant and the officer of the Board agree in writing, at any time before the determination of the appeal, that it is to be disregarded; or
  - (b) the General Commissioners have given a direction under subparagraph (5) below and have not revoked it.
- (4) At any time before the determination of an appeal in respect of which an election has been made an officer of the Board after giving notice to the appellant may refer the election to the General Commissioners.
- (5) On any such reference the Commissioners shall, unless they are satisfied that the appellant has arguments to present or evidence to adduce on the merits of the appeal, give a direction that the election be disregarded.
- (6) If, at any time after the giving of such a direction (but before the determination of the appeal) the General Commissioners are satisfied that the appellant has arguments to present or evidence to adduce on the merits of the appeal, they shall revoke the direction.
- (7) Any decision to give or revoke such a direction shall be final.
- (8) If—

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- (a) a person bringing an appeal under paragraph 9(1) above has another appeal pending to either body of Commissioners concerning an assessment on him, and
  - (b) the appeals relate to the same source of income,
- the appeal under paragraph 9(1) above shall be to the body of Commissioners before whom the appeal concerning the assessment is being brought.

(9) This paragraph is subject to provision made by or under Part V of this Act.”

10 The following Schedule shall be substituted for Schedule 3—

“SCHEDULE  
3 U.K.

RULES FOR ASSIGNING PROCEEDINGS TO GENERAL COMMISSIONERS

*Introductory*

1 In this Schedule—

“the relevant place” means the place referred to in section 44(1) of this Act, which is used to identify the General Commissioners before whom proceedings are to be brought; and

“the taxpayer”, in relation to any proceedings, means the party to the proceedings who is neither the Board nor an officer of the Board.

*General rule for income and capital gains tax proceedings*

2 (1) In the case of any proceedings relating to income tax or capital gains tax the relevant place is whichever of the places specified in sub-paragraph (2) below is identified—

- (a) except where the proceedings are commenced by an officer of the Board, by an election made by the taxpayer; and
- (b) where the proceedings are so commenced, by an election made by the officer.

(2) Those places are—

- (a) the place (if any) in the United Kingdom which, at the time when the election is made, is the taxpayer’s place of residence;
- (b) the place (if any) which at that time is the taxpayer’s place of business in the United Kingdom;
- (c) the place (if any) in the United Kingdom which at that time is the taxpayer’s place of employment;

and, in the case of a place of employment, it shall be immaterial for the purposes of this paragraph whether the proceedings in question relate to matters connected with the employment of the taxpayer.

(3) Where the taxpayer fails to make an election for the purposes of this paragraph before the time limit given by paragraph 5 below, an officer of the

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Board may elect which of the places specified in sub-paragraph (2) above is to be the relevant place.

- (4) In sub-paragraph (2)(a) above “place of residence” means—
- (a) in relation to an election made by the taxpayer, his usual place of residence; and
  - (b) in relation to an election made by an officer of the Board, the taxpayer’s usual place of residence or, if that is unknown, his last known place of residence.
- (5) In sub-paragraph (2)(b) above “place of business” means—
- (a) the place where the trade, profession, vocation or business with which the proceedings are concerned is carried on, or
  - (b) if the trade, profession, vocation or business is carried on at more than one place, the head office or place where it is mainly carried on.
- (6) This paragraph does not apply in the case of any proceedings to which paragraph 3, 4 or 7 below applies.

*PAYE appeals*

- 3 (1) In the case of an appeal in exercise of a right of appeal conferred by regulations under section 203 of the principal Act, the relevant place is—
- (a) except in a case falling in paragraph (b) below, the place determined by the regulations, and
  - (b) if the appellant elects for one of the places specified in paragraph 2(2) above to be the relevant place instead, the place identified by the election.
- (2) This paragraph does not apply in the case of any proceedings to which paragraph 4 or 7 below applies.

*Corporation tax etc.*

- 4 (1) In the case of the proceedings mentioned in sub-paragraph (2) below the relevant place is whichever of the places specified in sub-paragraph (3) below is identified—
- (a) except where the proceedings are commenced by an officer of the Board, by an election made by the company or other body corporate which is a party to the proceedings (“the corporate taxpayer”); and
  - (b) where the proceedings are so commenced, by an election made by the officer.
- (2) The proceedings are—
- (a) proceedings relating to corporation tax;
  - (b) proceedings relating to income tax which are proceedings to which a company resident in the United Kingdom and within the charge to corporation tax is a party;
  - (c) proceedings relating to tax assessable under sections 419 and 420 of the principal Act (close company loans).
- (3) The places are—

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- (a) the place where, at the time when the election is made, the corporate taxpayer carries on its trade or business;
  - (b) the place where, at that time, the head office or principal place of business of the corporate taxpayer is situated;
  - (c) the place where, at that time, the corporate taxpayer resides.
- (4) Where the corporate taxpayer fails to make an election for the purposes of this paragraph before the time limit given by paragraph 5 below, an officer of the Board may elect which of the places specified in sub-paragraph (3) above is to be the relevant place.
- (5) This paragraph does not apply in the case of any proceedings to which paragraph 7 below applies.

*Procedure for making elections, etc.*

- 5 (1) An election by a taxpayer for the purposes of this Schedule shall be made by notice in writing to an officer of the Board.
- (2) The time limit for the making of such an election in relation to proceedings is—
- (a) the time when the taxpayer gives notice of appeal or, if the proceedings are not an appeal, otherwise commences the proceedings; or
  - (b) such later date as the Board allows.
- (3) Such an election shall be irrevocable.
- 6 An election by an officer of the Board for the purposes of this Schedule shall be made by notice in writing served on the taxpayer.

*Partnerships*

- 7 In the case of proceedings relating to a partnership to which a partner of that partnership is a party, the relevant place is—
- (a) the place where the trade, profession or business of the partnership is carried on, or
  - (b) if the trade, profession or business is carried on at more than one place, the place where it is mainly carried on.

*Directions by the Board*

- 8 (1) The Board may give a direction in relation to any class of proceedings specified in the direction that, notwithstanding the preceding provisions of this Schedule, the relevant place shall be taken to be a place in a division specified in the direction.
- (2) A direction given under this paragraph shall not have effect in relation to any proceedings unless an officer of the Board has served on the taxpayer a notice in writing stating the effect of the direction in relation to those proceedings.
- (3) A direction given under this paragraph shall not have effect if the taxpayer gives a notice in accordance with sub-paragraph (4) below objecting to the direction.

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- (4) The taxpayer gives a notice in accordance with this sub-paragraph if he gives it in writing to the Board within the period of 30 days beginning with the day on which the notice under sub-paragraph (2) above was served on him.
- 9 (1) The Board may give directions for determining the relevant place in cases where —
- (a) the proceedings fall within paragraph 2, 4 or 7 above, but there is no place falling within paragraph 2(2), 4(3) or, as the case may be, paragraph 7; or
  - (b) the relevant place would, apart from the direction, be a place outside the United Kingdom.
- (2) A direction given under this paragraph by the Board shall not have effect in relation to any proceedings unless an officer of the Board has served on the taxpayer a notice in writing stating the effect of the direction in relation to those proceedings.
- (3) A direction under sub-paragraph (1) above may be given in relation to—
- (a) proceedings falling within that sub-paragraph;
  - (b) any class of such proceedings specified in the direction; or
  - (c) proceedings specified in the direction.

*Other provisions*

- 10 The provisions of this Schedule have effect subject to sections 44(2), 46A and 57 of this Act, sections 102(1), 113(5), 343(10) and 783(9) of the principal Act and section 151 of the <sup>M2</sup>Capital Allowances Act 1990.”

**Marginal Citations**

**M2** 1990 c. 1.

*Section 102 of the Taxes Act 1988*

- 11 In section 102(1)(a) of the Taxes Act 1988 (cases where jurisdiction exercised by General Commissioners) for “both the trades, professions or vocations” there shall be substituted “ each of the persons whose trade, profession or vocation is one of those ”.

*Commencement of Schedule*

- 12 This Schedule has effect in relation to—
- (a) any proceedings relating to the year 1996-97 or any subsequent year of assessment, and
  - (b) any proceedings relating to an accounting period ending on or after the day appointed under section 199 of the <sup>M3</sup>Finance Act 1994 for the purposes of Chapter III of Part IV of that Act (self-assessment).



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