



Finance Act 1989

1989 CHAPTER 26

PART II

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER IV

MANAGEMENT

Information

142 Power to call for documents and information

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

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

143 Power to call for papers of tax accountant

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“(9) Subject to subsections (11) and (12) below, a notice under section 20(3) or (8A)—

- (a) does not oblige a person who has been appointed as an auditor for the purposes of any enactment to deliver or make available documents which are his property and were created by him or on his behalf for

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

145 Falsification etc. of documents

(1) After section 20B of the Taxes Management Act 1970 there shall be inserted—

“20BB Falsification etc. of documents

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

146 Entry with warrant to obtain documents

- (1) Section 20C of the Taxes Management Act 1970 (entry with warrant to obtain documents) shall be amended as follows.
- (2) In subsection (1)—
 - (a) for the words “any form of fraud” there shall be substituted the words “serious fraud”, and

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- (b) for the words “has been” there shall be substituted the words “is being, has been or is about to be”.

(3) After that subsection there shall be inserted—

“(1A) Without prejudice to the generality of the concept of serious fraud—

- (a) any offence which involves fraud is for the purposes of this section an offence involving serious fraud if its commission had led, or is intended or likely to lead, either to substantial financial gain to any person or to serious prejudice to the proper assessment or collection of tax; and
- (b) an offence which, if considered alone, would not be regarded as involving serious fraud may nevertheless be so regarded if there is reasonable ground for suspecting that it forms part of a course of conduct which is, or but for its detection would be, likely to result in serious prejudice to the proper assessment or collection of tax.

(1B) The powers conferred by a warrant under this section shall not be exercisable—

- (a) by more than such number of officers of the Board as may be specified in the warrant;
- (b) outside such times of day as may be so specified;
- (c) if the warrant so provides, otherwise than in the presence of a constable in uniform.”

(4) For subsections (3) to (5) there shall be substituted—

“(3) An officer who enters the premises under the authority of a warrant under this section may—

- (a) take with him such other persons as appear to him to be necessary;
- (b) seize and remove any things whatsoever found there which he has reasonable cause to believe may be required as evidence for the purposes of proceedings in respect of such an offence as is mentioned in subsection (1) above; and
- (c) search or cause to be searched any person found on the premises whom he has reasonable cause to believe to be in possession of any such things;

but no person shall be searched except by a person of the same sex.

(4) Nothing in subsection (3) above authorises the seizure and removal of documents in the possession of a barrister, advocate or solicitor with respect to which a claim to professional privilege could be maintained.

(5) An officer of the Board seeking to exercise the powers conferred by a warrant under this section or, if there is more than one such officer, that one of them who is in charge of the search—

- (a) if the occupier of the premises concerned is present at the time the search is to begin, shall supply a copy of the warrant endorsed with his name to the occupier;
- (b) if at that time the occupier is not present but a person who appears to the officer to be in charge of the premises is present, shall supply such a copy to that person; and

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- (c) if neither paragraph (a) nor paragraph (b) above applies, shall leave such a copy in a prominent place on the premises.
- (6) Where entry to premises has been made with a warrant under this section, and the officer making the entry has seized any things under the authority of the warrant, he shall endorse on or attach to the warrant a list of the things seized.
- (7) Subsections (10) to (12) of section 16 of the Police and Criminal Evidence Act 1984 (return, retention and inspection of warrants) apply to a warrant under this section (together with any list endorsed on or attached to it under subsection (6) above) as they apply to a warrant issued to a constable under any enactment.
- (8) Subsection (7) above extends to England and Wales only.”
- (5) This section shall apply with respect to warrants issued on or after the day on which this Act is passed.

147 Procedure where documents etc. are removed

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

“20CC Procedure where documents etc. are removed

- (1) An officer of the Board who removes anything in the exercise of the power conferred by section 20C above shall, if so requested by a person showing himself—
 - (a) to be the occupier of premises from which it was removed, or
 - (b) to have had custody or control of it immediately before the removal, provide that person with a record of what he removed.
- (2) The officer of the Board shall provide the record within a reasonable time from the making of the request for it.
- (3) Where anything which has been removed by an officer of the Board as mentioned in subsection (1) above is of such a nature that a photograph or copy of it would be sufficient—
 - (a) for use as evidence at a trial for an offence, or
 - (b) for forensic examination or for investigation in connection with an offence,it shall not be retained longer than is necessary to establish that fact and to obtain the photograph or copy.
- (4) Subject to subsection (8) below, if a request for permission to be granted access to anything which—
 - (a) has been removed by an officer of the Board, and
 - (b) is retained by the Board for the purpose of investigating an offence,is made to the officer in overall charge of the investigation by a person who had custody or control of the thing immediately before it was so removed or by someone acting on behalf of any such person, the officer shall allow the person who made the request access to it under the supervision of an officer of the Board.

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- (5) Subject to subsection (8) below, if a request for a photograph or copy of any such thing is made to the officer in overall charge of the investigation by a person who had custody or control of the thing immediately before it was so removed, or by someone acting on behalf of any such person, the officer shall—
 - (a) allow the person who made the request access to it under the supervision of an officer of the Board for the purpose of photographing it or copying it, or
 - (b) photograph or copy it, or cause it to be photographed or copied.
- (6) Where anything is photographed or copied under subsection (5)(b) above the photograph or copy shall be supplied to the person who made the request.
- (7) The photograph or copy shall be supplied within a reasonable time from the making of the request.
- (8) There is no duty under this section to grant access to, or to supply a photograph or copy of, anything if the officer in overall charge of the investigation for the purposes of which it was removed has reasonable grounds for believing that to do so would prejudice—
 - (a) that investigation;
 - (b) the investigation of an offence other than the offence for the purposes of the investigation of which the thing was removed; or
 - (c) any criminal proceedings which may be brought as a result of—
 - (i) the investigation of which he is in charge, or
 - (ii) any such investigation as is mentioned in paragraph (b) above.
- (9) Any reference in this section to the officer in overall charge of the investigation is a reference to the person whose name and address are endorsed on the warrant concerned as being the officer so in charge.”
- (2) This section shall apply with respect to warrants issued on or after the day on which this Act is passed.

148 Interpretation

- (1) Section 20D of the Taxes Management Act 1970 shall be amended as follows.
- (2) In subsection (2), for the words “of returns or accounts to be made or delivered by the other” there shall be substituted the words “or delivery of any information, return, accounts or other document which he knows will be, or is or are likely to be, used”.
- (3) For subsection (3) there shall be substituted—
 - “(3) Without prejudice to section 127 of the Finance Act 1988, in sections 20 to 20CC above “document” has, subject to sections 20(8C) and 20A(1A), the same meaning as it has—
 - (a) in relation to England and Wales, in Part I of the Civil Evidence Act 1968,
 - (b) in relation to Scotland, in Part III of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1968, and

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- (c) in relation to Northern Ireland, in Part I of the Civil Evidence Act (Northern Ireland) 1971.”
- (4) Subsection (3) above shall not affect the meaning of “business” in sections 20 and 20C of the Taxes Management Act 1970 before the coming into force of sections 142 and 146 above.