



Finance Act 1994

1994 CHAPTER 9

PART IV

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER III

MANAGEMENT: SELF-ASSESSMENT ETC.

Determinations and assessments to protect revenue

190 Determination of tax where no return delivered.

After section 28B of the Management Act there shall be inserted the following section—

“28C Determination of tax where no return delivered.

(1) Where—

- (a) a notice has been given to any person under section 8, 8A or 11 of this Act (the relevant section), and
- (b) the required return is not delivered on or before the filing date,

an officer of the Board may make a determination of the amounts in which, to the best of his information and belief, the person who should have made the return is chargeable to income tax and capital gains tax for the year of assessment or (as the case may be) is chargeable to corporation tax for the accounting period.

- (2) Notice of any determination under this section shall be served on the person in respect of whom it is made and shall state the date on which it is issued.

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- (3) Until such time (if any) as it is superseded by a self-assessment made under section 9 or 11AA of this Act (whether by the taxpayer or an officer of the Board) on the basis of information contained in a return under the relevant section, a determination under this section shall have effect for the purposes of Parts VA, VI, IX and XI of this Act as if it were such a self-assessment.
- (4) Where—
 - (a) an officer of the Board has commenced any proceedings for the recovery of any tax charged by a determination under this section; and
 - (b) before those proceedings are concluded, the determination is superseded by such a self-assessment as is mentioned in subsection (3) above,
 those proceedings may be continued as if they were proceedings for the recovery of so much of the tax charged by the self-assessment as is due and payable and has not been paid.
- (5) No determination under this section, and no self-assessment superseding such a determination, shall be made otherwise than—
 - (a) before the end of the period of five years beginning with the filing date; or
 - (b) in the case of such a self-assessment, before the end of the period of twelve months beginning with the date of the determination.
- (6) In this section “the filing date” means the day mentioned in section 8(1A), section 8A(1A) or, as the case may be, section 11(4) of this Act.”

191 Assessment where loss of tax discovered.

- (1) For section 29 of the Management Act there shall be substituted the following section—

“29 Assessment where loss of tax discovered.

- (1) If an officer of the Board or the Board discover, as regards any person (the taxpayer) and a chargeable period—
 - (a) that any profits which ought to have been assessed to tax have not been assessed, or
 - (b) that an assessment to tax is or has become insufficient, or
 - (c) that any relief which has been given is or has become excessive,
 the officer or, as the case may be, the Board may, subject to subsections (2) and (3) below, make an assessment in the amount, or the further amount, which ought in his or their opinion to be charged in order to make good to the Crown the loss of tax.
- (2) Where—
 - (a) the taxpayer has made and delivered a return under section 8, 8A or 11 of this Act in respect of the relevant chargeable period, and
 - (b) the situation mentioned in subsection (1) above is attributable to an error or mistake in the return as to the basis on which his liability ought to have been computed,

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the taxpayer shall not be assessed under that subsection in respect of the chargeable period there mentioned if the return was in fact made on the basis or in accordance with the practice generally prevailing at the time when it was made.

- (3) Where the taxpayer has made and delivered a return under section 8, 8A or 11 of this Act in respect of the relevant chargeable period, he shall not be assessed under subsection (1) above—

- (a) in respect of the chargeable period mentioned in that subsection; and
- (b) in the case of a return under section 8 or 8A, in the same capacity as that in which he made and delivered the return,

unless one of the two conditions mentioned below is fulfilled.

- (4) The first condition is that the situation mentioned in subsection (1) above is attributable to fraudulent or negligent conduct on the part of the taxpayer or a person acting on his behalf.

- (5) 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 taxpayer's return under section 8, 8A or 11 of this Act in respect of the relevant chargeable period; or
- (b) informed the taxpayer 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.

- (6) For the purposes of subsection (5) above, information is made available to an officer of the Board if—

- (a) it is contained in the taxpayer's return under section 8, 8A or 11 of this Act in respect of the relevant chargeable period (the return), or in any accounts, statements or documents accompanying the return;
- (b) it is contained in any claim made as regards the relevant chargeable period by the taxpayer acting in the same capacity as that in which he made the return, or in any accounts, statements or documents accompanying any such claim;
- (c) it is contained in any documents, accounts or particulars which, for the purposes of any enquiries into the return or any such claim by an officer of the Board, are produced or furnished by the taxpayer to the officer, whether in pursuance of a notice under section 19A of this Act or otherwise; or
- (d) it is information the existence of which, and the relevance of which as regards the situation mentioned in subsection (1) above—
 - (i) could reasonably be expected to be inferred by an officer of the Board from information falling within paragraphs (a) to (c) above; or
 - (ii) are notified in writing by the taxpayer to an officer of the Board.

- (7) In subsection (6) above—

- (a) any reference to the taxpayer's return under section 8, 8A or 11 of this Act in respect of the relevant chargeable period includes—

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- (i) a reference to any return of his under that section for either of the two immediately preceding chargeable periods; and
 - (ii) where the return is under section 8 and the taxpayer carries on a trade, profession or business in partnership, a reference to any return with respect to the partnership under section 12AA of this Act for the relevant chargeable period or either of those periods; and
- (b) any reference in paragraphs (b) to (d) to the taxpayer includes a reference to a person acting on his behalf.
- (8) An objection to the making of an assessment under this section on the ground that neither of the two conditions mentioned above is fulfilled shall not be made otherwise than on an appeal against the assessment.
- (9) Any reference in this section to the relevant chargeable period is a reference to—
 - (a) in the case of the situation mentioned in paragraph (a) or (b) of subsection (1) above, the chargeable period mentioned in that subsection; and
 - (b) in the case of the situation mentioned in paragraph (c) of that subsection, the chargeable period in respect of which the claim was made.
- (10) 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.”
- (2) This section, 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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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 16A(2)(g) inserted by [2023 c. 30 Sch. 13 para. 28](#)
- s. 160(2)-(7) modified by 2010 c. 8 s. 464(6) (as inserted) by [2017 c. 32 Sch. 5 para. 1](#)
- Sch. 5 para. 2(1)(pa) inserted by [S.I. 2022/109 reg. 4](#) (This amendment not applied to [legislation.gov.uk](#). The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)