
STATUTORY INSTRUMENTS

1994 No. 1811

INCOME TAX

INHERITANCE TAX

TAXES

**The Special Commissioners (Jurisdiction
and Procedure) Regulations 1994**

Made - - - - *6th July 1994*

Laid before Parliament *14th July 1994*

Coming into force - - *1st September 1994*

The Lord Chancellor, in exercise of the powers conferred on him by sections 46A and 56B to 56D of the Taxes Management Act 1970(1), after consultation with the Council on Tribunals in accordance with section 8 of the Tribunals and Inquiries Act 1992(2) and with the consent of the Lord Advocate, hereby makes the following Regulations:

PART I

INTRODUCTORY

Citation, commencement and application

1.—(1) These Regulations may be cited as the Special Commissioners (Jurisdiction and Procedure) Regulations 1994 and shall come into force on 1st September 1994.

(2) These Regulations do not apply in relation to any proceedings in respect of which notice of the place, date and time of the hearing was given, or a summons was issued, prior to 1st September 1994.

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- (1) 1970 c. 9. Section 46A was inserted by paragraph 3, and sections 56B to 56D by paragraph 4, of Schedule 16 to the Finance (No. 2) Act 1992 (c. 48). Section 56B was amended by section 254 of the Finance Act 1994 (c. 9). Paragraph 6 of Schedule 16 to the Finance (No. 2) Act 1992 extended section 46A, with modifications, and sections 56B to 56D to petroleum revenue tax appeals, and paragraph 8 of the Schedule extended those provisions to inheritance tax appeals by the insertion in the Inheritance Tax Act 1984 (c. 51) of section 225A. Section 46A and sections 56B to 56D were also extended, with modifications, to stamp duty reserve tax appeals by regulation 20 of, and Part I of the Schedule to, the Stamp Duty Reserve Tax Regulations 1986 (S.I. 1986/1711, amended by S.I. 1993/3110).
- (2) 1992 c. 53.

Interpretation

2. In these Regulations unless the context otherwise requires—

“the Board” means the Commissioners of Inland Revenue;

“the Clerk”, in relation to any proceedings, means the Clerk to the Special Commissioners;

“costs” includes fees, charges, disbursements, expenses and remuneration;

“final determination” means the decision finally determining any proceedings before a Tribunal;

“General Commissioners” shall be construed in accordance with section 2(1) of the Management Act⁽³⁾;

“inspector” means an inspector of taxes;

“the Management Act” means the Taxes Management Act 1970⁽⁴⁾;

“party” means a party to any proceedings, and for the purposes of these Regulations—

(a) where the proceedings relate to an assessment, decision or determination made by the Board, the Board and any inspector or other officer of the Board for the time being concerned with the proceedings shall together constitute a party to those proceedings;

(b) where the proceedings relate to an assessment, decision or determination made by an inspector or other officer of the Board, that person and any other inspector or other officer of the Board for the time being concerned with the proceedings shall together constitute a party to those proceedings;

and references to “the Revenue” are references to a party within paragraph (a) or, as the case may be, paragraph (b) above;

“proceedings” means—

(a) any appeal to the Special Commissioners under the Taxes Acts;

(b) any proceedings before the Special Commissioners which under the Taxes Acts are to be heard and determined in the same way as such an appeal;

(c) any proceedings before the Special Commissioners which relate to a penalty and are not within paragraph (a) or paragraph (b) above;

(d) any appeal to the Special Commissioners relating to inheritance tax;

(e) any appeal to the Special Commissioners relating to stamp duty reserve tax;

(f) any appeal to the Special Commissioners relating to petroleum revenue tax;

“proceedings in Northern Ireland” means any proceedings (as defined in this regulation)—

(a) which fall within the meaning of that expression as defined in section 58(3) of the Management Act⁽⁵⁾, or

(b) as respects which an appeal from the determination of the Special Commissioners under any enactment lies to a court in Northern Ireland;

“proceedings in Scotland” means any proceedings (as defined in this regulation) which fall to be determined by reference to the law of Scotland;

“Special Commissioners” and “the Presiding Special Commissioner” shall be construed in accordance with section 4(1) of the Management Act⁽⁶⁾;

(3) Section 2(1) was amended by section 134(1) of the Finance Act 1988 (c. 39).

(4) 1970 c. 9.

(5) Section 58(3) was substituted by section 135(2) of the Finance Act 1988, and was applied with modifications in relation to petroleum revenue tax by paragraph 1(1) of Schedule 2 to the Oil Taxation Act 1975 (c. 22).

(6) Section 4 was substituted by paragraph 1 of Schedule 22 to the Finance Act 1984 (c. 43) and amended by paragraph 30 of Schedule 10 to the Courts and Legal Services Act 1990 (c. 41).

“the Taxes Acts” has the meaning given by section 118(1) of the Management Act(7);
“Tribunal”, in relation to any proceedings, means the Special Commissioner or Special Commissioners by whom the proceedings are heard.

PART II

PREPARATION FOR A HEARING

Listing and notice of hearing

3.—(1) Except in relation to proceedings under section 100C of the Management Act(8), or section 249 of the Inheritance Tax Act 1984(9), any party to proceedings which are to be heard by the Special Commissioners may serve notice on the Clerk that he wishes a date for the hearing to be fixed.

(2) On receipt of a notice under paragraph (1) above and on being satisfied that the Special Commissioners have jurisdiction over the proceedings and that he has sufficient particulars of the proceedings and of the issues for determination, the Clerk shall, unless the Presiding Special Commissioner otherwise directs, send notice to each party of the place, date and time of the hearing.

(3) Unless the parties otherwise agree or the Tribunal otherwise directs, the date of the hearing specified in a notice under paragraph (2) above shall be not earlier than twenty eight days after the date on which the notice is sent to the parties.

General power to give directions

4.—(1) A Special Commissioner prior to the hearing of any proceedings, for the purpose of enabling the parties to prepare for the hearing or of assisting a Tribunal to determine any of the issues in those proceedings, may on the application of a party or of his own motion, give such directions as he thinks fit.

(2) A Tribunal hearing any proceedings may, for the purpose of assisting the determination of any of the issues in those proceedings, on the application of a party or of its own motion, give such directions as it thinks fit.

(3) An application by a party for any directions under this Part of these Regulations (otherwise than during a hearing) shall be made in writing to the Clerk and, unless it is accompanied by the written consent of all the parties, shall be served by the Clerk on any other party who might be affected by such directions.

(4) If any such other party, by notice to the Special Commissioners and the other party or parties, objects to the directions sought in the application, the Special Commissioner concerned shall consider the objection and, if the application is not one in respect of which the parties are entitled to be heard under these Regulations, shall if he considers it necessary for the determination of the application, give the parties an opportunity to be heard.

(7) The definition of “the Taxes Acts” in section 118(1) was amended by paragraph 32(d) of Schedule 8 to the Development Land Tax Act 1976 (c. 24), paragraph 8 of Schedule 7 to the Capital Gains Tax Act 1979 (c. 14), Schedule 31 to the Income and Corporation Taxes Act 1988 (c. 1), and paragraph 2(11)(b) of Schedule 10 to the Taxation of Chargeable Gains Act 1992 (c. 12).

(8) Section 100C together with sections 100, 100A, 100B and 100D was substituted for section 100 by section 167 of the Finance Act 1989 (c. 26). Section 100C was applied with modifications in relation to petroleum revenue tax by paragraph 1(1) of Schedule 2 to the Oil Taxation Act 1975 and with modifications in relation to stamp duty reserve tax by regulation 20 of, and Part I of the Schedule to, the Stamp Duty Reserve Tax Regulations 1986 (S.I. 1986/1711, amended by S.I. 1993/3110).

(9) 1984 c. 51. By section 100(1) and (2) of the Finance Act 1986 (c. 41), on and after 25th July 1986 the Capital Transfer Tax Act 1984 may be cited as the Inheritance Tax Act 1984, and any reference in that Act to capital transfer tax is to have effect as a reference to inheritance tax, except where the reference relates to a liability arising before 25th July 1986.

Summoning of witnesses

5.—(1) Where a party to any proceedings requires the attendance of a person at the hearing of those proceedings to give evidence or to produce any document in his possession, custody or power relevant to the subject matter of the proceedings, a Special Commissioner may, on the application of that party, issue a summons (in this regulation referred to as a “witness summons”) requiring the attendance of that person at the hearing, or the production of the document, wherever that person may be in the United Kingdom.

(2) A witness summons issued under paragraph (1) above shall state the name and address of, or otherwise describe, the person to be served and shall be signed by the Special Commissioner issuing it, and it shall be the responsibility of the party on whose application the summons was issued to serve it on that person.

(3) Service of a witness summons under this regulation shall be effected—

- (a) in the case of an individual, by leaving a copy of the summons with him;
- (b) in the case of a body corporate registered in the United Kingdom, by leaving a copy of the summons with the secretary or clerk of the body corporate;
- (c) in the case of a foreign body corporate with a place of business in the United Kingdom, by leaving a copy of the summons with a person authorised to accept service of process on the body corporate.

(4) A person who in obedience to a witness summons attends the hearing of any proceedings and gives evidence—

- (a) is a witness of the party on whose application the summons was issued, and
- (b) may not be cross-examined by that party without the leave of the Tribunal hearing the proceedings.

(5) Leave shall not be given by a Tribunal under paragraph (4)(b) above unless the Tribunal decides that the witness may be treated as a hostile witness.

(6) No person shall be required to attend in obedience to a witness summons unless it has been served on him at least seven days before the hearing or, if it has been served on him within that period, he has informed the Clerk that he accepts such service.

(7) No person shall be required to attend and give evidence or to produce any document in obedience to a witness summons unless the party serving the summons either—

- (a) pays or tenders to that person, at the time when the summons is served on him, a sum sufficient to cover his reasonable expenses of travelling to and from, and his attendance at, the hearing, or
- (b) has agreed with that person, prior to service of the summons, to pay such a sum to him at a different time.

(8) No person shall be compelled in obedience to a witness summons to give any evidence or produce any document that he could not be compelled to give or produce in an action in a court of law in that part of the United Kingdom by reference to the law of which the proceedings are to be determined.

(9) No person who has been appointed as an auditor for the purposes of any enactment or who is a tax adviser within the meaning of section 20B(10) of the Management Act⁽¹⁰⁾ shall be compelled in obedience to a witness summons to produce any document if, having regard to section 20B(9) to

⁽¹⁰⁾ Sections 20 to 20D were substituted for section 20 by Schedule 6 to the Finance Act 1976 (c. 40), and subsections (9) to (14) of section 20B were substituted for subsection (9) of that section by section 144(7) of the Finance Act 1989. Subsection (3) of the substituted section 20 was amended by section 142(4) of the Finance Act 1989 and subsection (8A) was inserted by section 126(3) of the Finance Act 1988.

(13) of that Act, he would not be obliged to deliver or make available that document in response to a notice under section 20(3) or (8A)(10) of that Act.

(10)

Where, in the case of any document, a person could under section 20B(14) of that Act comply with such a notice by delivering a copy of parts of the document and making those parts available for inspection, he shall not be compelled in obedience to a witness summons to do more at the hearing than—

- (a) produce a photographic or other facsimile copy of those parts of the document, and
- (b) make those parts of the document available for inspection by the Tribunal.

(11) On the application, by notice served on the Clerk, of a person on whom a witness summons has been served, a Special Commissioner may set aside the summons in whole or in part; and the party on whose application the summons was issued shall be entitled to be heard on such an application.

(12) This regulation shall apply to proceedings in Scotland—

- (a) with the omission of paragraphs (4) and (5) above;
- (b) with the substitution for references to issuing a summons and to a witness summons of references to issuing a citation and to a witness citation.

Agreement of documents

6. If a party agrees a document for the purposes of any proceedings he shall be deemed, subject to the terms of the agreement, to admit for the purposes of those proceedings—

- (a) that the document was written and signed or executed by the person by whom, and on the date on which, it purports to have been, and
- (b) if it purports to be a copy of another document, that it is a true copy of that document,

but, subject to any enactment or rule of law, in the absence of an express admission or agreement, he shall not be deemed to admit the truth of the contents of that document.

Proceedings to be heard together or in succession

7.—(1) Where two or more proceedings have been brought before, but have not yet been heard by, the Special Commissioners or have been brought before, but have not yet been heard by, the Special Commissioners and any General Commissioners and it appears to the Presiding Special Commissioner—

- (a) that some common issue arises in both or all of them, or
- (b) that both or all of them are relevant to some common issue,

the Presiding Special Commissioner may, of his own motion or on application by a party to any of those proceedings, direct that those proceedings be heard at the same time or consecutively and by the same Tribunal.

(2) A direction shall not be given under paragraph (1) above except on notice sent to all the parties to the proceedings in question who shall be entitled to be heard before any direction is given.

(3) On the giving of a direction under paragraph (1) above, the Clerk shall send notice of the date and terms of the direction to all the parties to the proceedings and, where one or more of the

(10) Sections 20 to 20D were substituted for section 20 by Schedule 6 to the Finance Act 1976 (c. 40), and subsections (9) to (14) of section 20B were substituted for subsection (9) of that section by section 144(7) of the Finance Act 1989. Subsection (3) of the substituted section 20 was amended by section 142(4) of the Finance Act 1989 and subsection (8A) was inserted by section 126(3) of the Finance Act 1988.

proceedings in question was pending before the General Commissioners, to the Clerk to the division or, as the case may be, each division of General Commissioners concerned.

(4) References in this regulation to proceedings pending before the General Commissioners are references to proceedings in relation to which the General Commissioners (Jurisdiction and Procedure) Regulations 1994(11) apply.

Joining of additional parties

8.—(1) If it appears to a Special Commissioner, whether on the application of a party or otherwise, that it is desirable that any person other than the Revenue be made a party to any proceedings, he may direct that such person be joined as a party in the proceedings and may give such further directions for giving effect to, or in connection with, the direction as he thinks fit.

(2) Where—

- (a) pursuant to a direction under paragraph (1) above a person is joined as a party in any proceedings by reason of a question arising in those proceedings which may affect his liability to tax or in which he otherwise has an interest, and
- (b) pursuant to an application under regulation 15(2) by another party the hearing or, as the case may be, part of the hearing of the proceedings is to take place in private,

he shall not be entitled, unless all the other parties consent, to be present at the hearing of the proceedings or, as the case may be, the part of the hearing which is to take place in private except during such part as relates to that question, and a Tribunal shall, if necessary, hear any such question separately from the rest of the proceedings.

(3) Subject to paragraph (4) below, on the application of a person who has been joined as a party in the circumstances specified in paragraph (2) above, a Special Commissioner may, if he is satisfied that it would be to the convenience of the parties to do so, direct that the proceedings be transferred to the General Commissioners for the division in which the applicant ordinarily resided at the date of the application.

(4) No application may be made under paragraph (3) above in any case where the proceedings in question under any enactment lie only to the Special Commissioners and not to the General Commissioners.

Preliminary hearing

9.—(1) Where it appears to a Special Commissioner that any proceedings would be facilitated by holding a preliminary hearing, he may, on the application of a party or of his own motion, give directions for such a hearing to be held.

(2) The Clerk shall give to the parties not less than fourteen days notice, or such shorter notice as the parties agree or the Special Commissioner sees fit to impose, of the time and place of the preliminary hearing.

(3) On a preliminary hearing the Special Commissioner—

- (a) shall give all such directions as appear necessary or desirable so as to enable the proceedings to be disposed of expeditiously, effectively and fairly;
- (b) may, if the parties so agree, determine the proceedings without any further hearing.

Power of Special Commissioners to obtain information

10.—(1) A Special Commissioner on a preliminary hearing of any proceedings, or a Tribunal in the course of the hearing of any proceedings, may serve notice on any party, other than the Revenue, directing that party within the time specified in the notice—

- (a) to deliver to him or, as the case may be, the Tribunal such particulars as he or the Tribunal may consider are required for the purposes of determining any of the issues in the proceedings, and
- (b) to make available for inspection by him or the Tribunal, or by an officer of the Board, all such books, accounts or other documents in the party's possession or power as may be specified or described in the notice, being books, accounts or other documents which, in the opinion of the Special Commissioner or Tribunal issuing the notice, contain or may contain information relating to the subject matter of the proceedings.

(2) Any officer of the Board may at all reasonable times inspect and take copies of, or extracts from, any particulars delivered under paragraph (1)(a) above, and the Special Commissioner or Tribunal who issued the notice, or any officer of the Board, may take copies of, or extracts from, any books, accounts or other documents made available for inspection under paragraph (1)(b) above.

Postponements and Adjournments

11.—(1) A Special Commissioner may postpone the hearing of any proceedings, and the Clerk shall send notice to the parties of the place, date and time of the postponed hearing.

(2) A Tribunal may from time to time adjourn the hearing of any proceedings and, subject to paragraph (3) below, the Clerk shall send notice to the parties of the place, date and time of the adjourned hearing.

(3) If the place, date and time of the adjourned hearing are announced before the adjournment in the presence of the parties, no notice need be sent by the Clerk under paragraph (2) above.

(4) When any hearing is adjourned in order that further information or evidence may be obtained, a Tribunal may give directions regarding the disclosure of such information or evidence to the parties prior to the resumption of the hearing.

Expert evidence

12.—(1) Unless a Special Commissioner otherwise directs, no expert evidence may be adduced by a party at the hearing of any proceedings unless—

- (a) he has agreed with the other party or parties that the substance of the evidence shall be disclosed in the form of a written report or opinion in advance of the hearing and not later than such date as is specified in the agreement, and the substance of the evidence has been so disclosed, or
- (b) where no such agreement has been reached or where the substance of the evidence has not been so disclosed, an application is made to a Special Commissioner under paragraph (2) below by the party seeking to adduce the evidence to determine whether a direction should be given under paragraph (3) below, and the party seeking to adduce the evidence complies with a direction given under that paragraph.

(2) An application under this paragraph—

- (a) shall be made not later than twenty one days after the date on which notice is sent by the Clerk under regulation 3(2) or, if the Special Commissioner so permits, at any later time prior to or in the course of the hearing, and
- (b) shall state whether the party is willing to disclose the substance of the evidence prior to its being given at the hearing and, if not, the reasons for his objection.

(3) On an application under paragraph (2) above, unless he considers that there are special reasons for not doing so, the Special Commissioner shall direct that the substance of the evidence shall be disclosed in the form of a written report or opinion to such other parties and within such period as he may specify.

(4) This regulation shall not apply to proceedings in Scotland.

PART III

HEARING AND DETERMINATION OF PROCEEDINGS

Constitution and sittings of Tribunal

13.—(1) Any one, two or three of the Special Commissioners shall constitute a Tribunal.

(2) Where any proceedings are before a Tribunal which comprises two or three Special Commissioners—

- (a) if the Presiding Special Commissioner is one of them, he shall preside at the hearing unless he otherwise directs and, if he is not, one of them shall be nominated by him to preside;
- (b) the proceedings may be continued by any one or more of them if all the parties give their consent and unless the Presiding Special Commissioner otherwise directs.

Representation at hearing

14. At the hearing of any proceedings before a Tribunal—

- (a) a party other than the Revenue may be represented by any person whether or not legally qualified, except that if in a particular case the Tribunal is satisfied that there are good and sufficient reasons for doing so, it may refuse to permit a particular person, other than one who is legally qualified or who has been admitted a member of an incorporated society of accountants, to represent a party at the hearing;
- (b) the Revenue may be represented by a barrister, advocate, solicitor or any officer of the Board.

Hearings in public or in private

15.—(1) Subject to paragraph (2) below, hearings before a Tribunal shall be in public.

(2) Any party to proceedings may, by notice to the Clerk, apply for the hearing, or any part of the hearing, to take place in private; and where such application is made, the hearing or, as the case may be, the part of the hearing which is the subject of the application, shall take place in private—

- (a) if the application is made by a party other than the Revenue, or
- (b) if the application is made by the Revenue and a Special Commissioner so directs.

(3) The following persons shall be entitled to be present at the hearing of any proceedings before a Tribunal notwithstanding that the hearing or part of the hearing takes place in private, and may remain present during the deliberations of the Tribunal but shall take no part in those deliberations—

- (a) the Presiding Special Commissioner or any of the Special Commissioners notwithstanding that they do not constitute the Tribunal or part of the Tribunal for the purpose of the hearing;
- (b) the clerk and any of the staff of the Special Commissioners;
- (c) a member of the Council on Tribunals or of the Scottish Committee of that Council in the capacity of member;

(d) a member of the Judicial Studies Board or one of its committees in the capacity of member.

(4) A Tribunal, with the consent of the parties, may permit any other person to be present at the hearing of proceedings before it which is to take place, or part of which is to take place, in private.

Failure of parties to attend hearing

16.—(1) If a party fails to attend or to be represented at a hearing of which he has been duly notified, the Tribunal may—

- (a) unless it is satisfied that there is good and sufficient reason for such absence, hear and determine the proceedings in the absence of the party or his representative, or
- (b) postpone or adjourn the hearing.

(2) Before deciding to hear and determine any proceedings in the absence of a party or his representative, the Tribunal shall consider any representations in writing or otherwise submitted by or on behalf of that party in response to the notice of hearing and shall give any party present at the hearing an opportunity to be heard in regard to those representations.

Procedure and evidence at hearing

17.—(1) At the beginning of the hearing of any proceedings the Tribunal shall, except where it considers it unnecessary to do so, explain the order of proceeding which it proposes to adopt.

(2) The Tribunal shall conduct the hearing in such manner as it considers most suitable to the clarification and determination of the issues before it and generally to the just handling of the proceedings, and, so far as appears to it appropriate, shall seek to avoid formality in its procedure.

(3) The parties shall be heard in such order as the Tribunal shall determine and shall be entitled—

- (a) to give evidence,
- (b) to call witnesses,
- (c) to question any witnesses including other parties who give evidence, and
- (d) to address the Tribunal both on the evidence and generally on the subject matter of the proceedings.

(4) In assessing the truth and weight of any evidence, the Tribunal may take account of its nature and source, and the manner in which it is given.

(5) Evidence before the Tribunal may be given orally or, if the Tribunal so directs, by any affidavit or any statement made or recorded in a document, but at any stage of the hearing the Tribunal may, on the application of any party or of its own motion, require the personal attendance as a witness of—

- (a) the maker of an affidavit, or
- (b) the maker of such a statement, or
- (c) in the case of an oral statement recorded in a document, the person by whom the statement was so recorded.

(6) The Tribunal may receive evidence of any fact which appears to the Tribunal to be relevant to the subject matter of the proceedings notwithstanding that such evidence would be inadmissible in proceedings before a court of law in that part of the United Kingdom by reference to the law of which the proceedings before the Tribunal are to be determined,

but, save in cases where claims for privilege are allowed (including, in proceedings in Scotland, claims for protection from disclosure by virtue of any rule of law relating to the confidentiality of communications), it shall not refuse to admit any evidence which would be admissible in such proceedings.

(7) The Tribunal may require any witness to give evidence on oath or affirmation and for that purpose there may be administered an oath or affirmation in due form.

Decisions of Tribunal

18.—(1) Where proceedings are before a Tribunal which comprises two or three Special Commissioners, any decision of the Tribunal shall be made by the votes of the Special Commissioners comprising that Tribunal.

(2) Where proceedings are before a Tribunal which comprises two Special Commissioners, in the event of an equality of votes, the Special Commissioner presiding at the hearing shall be entitled to a second or casting vote.

(3) Where proceedings are before a Tribunal which comprises three Special Commissioners, any decision or direction of the tribunal shall be made by the votes of the majority of the Special Commissioners comprising that Tribunal.

(4) The final determination may be given orally by a Tribunal at the end of the hearing or may be reserved and in either event shall be recorded forthwith in a document which, subject to paragraph (7) below, shall contain a statement of the facts found by the Tribunal and the reasons for the determination and shall be signed and dated by the Tribunal.

(5) A Tribunal may, after reserving the final determination—

- (a) give a written decision in principle on one or more issues arising in the proceedings, and
- (b) adjourn the making of the final determination until after its decision in principle has been issued and such further questions arising from that decision have been agreed by the parties or, failing agreement, decided by the Tribunal after having heard the parties.

(6) A decision in principle given under paragraph (5)(a) above shall contain, in relation to the matters covered by the decision—

- (a) a statement of the facts found by the Tribunal, and
- (b) the reasons for the decision.

(7) In any case where a decision in principle has been given under paragraph (5)(a) above, the document recording the final determination need not contain a statement of the facts and reasons referred to in paragraph (4) above except in so far as is necessary in order to explain the final determination of the Tribunal on matters not covered in the decision in principle.

(8) The Clerk shall send a copy of the document recording a decision in principle, and a copy of the document recording the final determination, to each party.

(9) Except where the final determination is given at the end of the hearing, it shall be treated as having been made on the date on which a copy of the document recording it is sent to the parties under paragraph (8) above.

(10) Every copy of the document recording the final determination sent to the parties under this regulation shall be accompanied by a notification of the provisions of—

- (a) the Management Act,
- (b) these Regulations, and
- (c) rules of court,

relating to appeals from the Special Commissioners, and of the time within which, and the manner in which, such appeals shall be made.

Review of Tribunal's decision in principle or final determination

19.—(1) If, on the application of a party or of its own motion, a Tribunal is satisfied that—

- (a) a decision in principle or the final determination was wrongly made as a result of an administrative error on the part of the Clerk or any of the staff of the Special Commissioners or a party, or
- (b) a party, who was entitled to be heard at a hearing but failed to appear or to be represented, had good and sufficient reason for failing to appear or to be represented, or
- (c) accounts or other information relevant to a party's case had been sent to the Clerk or to the appropriate inspector or other officer of the Board prior to the hearing of the proceedings but had not been received by the Tribunal until after the hearing,

the Tribunal may review and set aside or vary the decision in principle or final determination (or both the decision in principle and the final determination).

(2) An application for the purposes of paragraph (1) above shall be made to the Tribunal not later than fourteen days after the date on which a copy of the document recording the decision in principle or, as the case may be, the final determination was sent to the parties under regulation 18(8), or by such later time as the Tribunal may allow, and shall be in writing stating the grounds in full.

(3) Where the Tribunal proposes to review of its own motion the decision in principle or final determination, it shall serve notice of that proposal on the parties not later than fourteen days after the date on which a copy of the document recording the decision in principle or, as the case may be, the final determination was sent to the parties under regulation 18(8).

(4) The parties shall have an opportunity to be heard on a review, or in relation to any application or proposal for review, under this regulation and the review shall be determined by the Tribunal which decided the case or, where it is not practicable for it to be heard by that Tribunal, by a Tribunal appointed by the Presiding Special Commissioner; and if, having reviewed the decision in principle or final determination, the Tribunal sets aside that decision or determination, it shall substitute such decision or determination as it thinks fit or order a rehearing before either the same or a differently constituted Tribunal.

(5) Regulation 18 shall apply to a decision by a Tribunal varying a decision in principle or final determination, or substituting a new decision in principle or final determination, as it applies to a decision in principle or final determination.

Publication of decisions in principle or final determinations

20.—(1) The Presiding Special Commissioner may make arrangements for the publication of reports of such of the decisions in principle and final determinations given by Tribunals as he considers appropriate.

(2) Where the Presiding Special Commissioner considers it appropriate to publish a report of a decision in principle or final determination pursuant to paragraph (1) above, and that decision or determination relates to proceedings the whole or part of which were heard in private in accordance with regulation 15(2), he shall ensure that the report is in a form which so far as possible prevents the identification of any person whose affairs are dealt with in the decision or determination.

Orders for costs

21.—(1) Subject to paragraph (2) below, a Tribunal may make an order awarding the costs of, or incidental to, the hearing of any proceedings by it against any party to those proceedings (including a party who has withdrawn his appeal or application) if it is of the opinion that the party has acted wholly unreasonably in connection with the hearing in question.

(2) No order shall be made under paragraph (1) above against a party without first giving that party an opportunity of making representations against the making of the order.

(3) An order under paragraph (1) above may require the party against whom it is made to pay to the other party or parties the whole or part of the costs incurred by the other party or parties of, or incidental to, the hearing of the proceedings, such costs to be taxed if not otherwise agreed.

(4) Any costs required to be taxed pursuant to an order under this regulation shall be taxed in the county court according to such of the scales prescribed by rules of court for proceedings in the county court as may be directed by the order or, in the absence of any such direction, by the county court.

(5) In the application of this regulation to proceedings in Scotland—

- (a) any reference to costs shall be construed as a reference to expenses;
- (b) in paragraph (4) above, for the references to the county court there shall be substituted references to the sheriff court and for the reference to proceedings there shall be substituted a reference to civil proceedings.

(6) In the application of this regulation to proceedings in Northern Ireland, for paragraphs (3) and (4) above there shall be substituted—

“(3) An order under paragraph (1) above may require the party against whom it is made to pay to the other party or parties the whole or part of the costs incurred by that other party or parties of, or incidental to, the hearing of the proceedings, such costs to be taxed in the county court if not determined by the Tribunal or otherwise agreed.

(4) Any costs which may be determined by the Tribunal under paragraph (3) above shall be determined by reference to the scales prescribed by rules of court for proceedings in the county court and any costs required to be taxed pursuant to an order under this regulation shall be taxed in the same manner as costs in equity suits or proceedings in the county court.”.

PART IV

SPECIAL PROCEDURE

Proceedings relating to tax on chargeable gains

22.—(1) Where the market value of an asset on a particular date or the apportionment of an amount or value is a material question in any proceedings relating to tax on chargeable gains, the Tribunal hearing the proceedings shall, if so required by any party, record in its decision in principle or final determination that market value or apportionment.

(2) The final determination on an appeal of the market value of an asset on a particular date or of the apportionment of any amount or value may be proved in any proceedings relating to tax on chargeable gains by a certificate stating the material particulars signed by—

- (a) an inspector where the appeal was settled by agreement, or
- (b) the Clerk where the Special Commissioners determined the appeal, or
- (c) the clerk or registrar of another tribunal where the material question was determined by that other tribunal in accordance with section 47 or 47B of the Management Act(12) or section 222(4A) of the Inheritance Tax Act 1984(13),

and a document purporting to be such a certificate may be received in evidence in any such proceedings without further proof.

(12) Section 47 was amended by Part VII of Schedule 14 to the Finance Act 1974 (c. 30), section 54(1) of the Finance Act 1975 (c. 7), paragraph 8 of Schedule 7, and Schedule 8, to the Capital Gains Tax Act 1979, and paragraph 2(2) of Schedule 10 to the Taxation of Chargeable Gains Act 1992. Section 47B was inserted by paragraph 22 of Schedule 9 to the Finance Act 1986 and amended by paragraph 32 of Schedule 29 to the Income and Corporation Taxes Act 1988.

(13) Subsection (4A) was inserted by section 200(1) of the Finance Act 1993 (c. 34).

(3) In this regulation the expression “final determination on an appeal” shall be construed in accordance with regulation 11(2) of the Capital Gains Tax Regulations 1967⁽¹⁴⁾, and the expression “material question in any proceedings” shall be construed in accordance with regulation 15(a) of those Regulations.

References of questions of value to other tribunals

23.—(1) A question in an appeal which is required to be determined in accordance with section 47 or 47B of the Management Act or section 222(4A) of the Inheritance Tax Act 1984 may be referred to the appropriate tribunal by the Tribunal before whom the appeal is brought or, if the hearing of the appeal has not begun, by an inspector or other officer of the Board.

(2) Where any question in an appeal has been referred to another tribunal in accordance with section 47 or 47B of the Management Act or section 222(4A) of the Inheritance Tax Act 1984, the Tribunal before whom the appeal is brought may finally determine the remaining questions in the appeal without awaiting the determination of the question referred to the other tribunal.

Penalty for failure to comply with Tribunal direction

24.—(1) If any party or other person fails to comply with any direction of a Tribunal under these Regulations including a direction in a notice under regulation 10, the Tribunal may summarily determine a penalty against that party or other person not exceeding £10,000.

(2) Subject to paragraphs (6) to (11) of regulation 5, if a person on whom a summons is served under that regulation—

- (a) fails to attend in obedience to the summons, or
- (b) attends, but refuses to be sworn or to affirm, or
- (c) refuses to answer any lawful question, or
- (d) refuses to produce any document which he has been required to produce,

the Tribunal may summarily determine a penalty against him not exceeding £10,000.

(3) Subject to paragraph (4) below, any penalty determined by the Tribunal under paragraph (1) or (2) above shall for all purposes be treated as if it were tax charged in an assessment and due and payable.

(4) Any penalty determined by the Tribunal under paragraph (1) or (2) above in proceedings relating to—

- (a) an appeal under section 222 of the Inheritance Tax Act 1984⁽¹⁵⁾, or
- (b) an appeal under regulation 8 of the Stamp Duty Reserve Tax Regulations 1986,

shall for all purposes be treated as if it were tax determined by the Board and due and payable.

PART V

MISCELLANEOUS

Irregularities

25.—(1) Any irregularity resulting from any failure to comply with any provision of these Regulations or with any direction given by a Tribunal before the Tribunal has reached its decision shall not of itself render the proceedings void.

⁽¹⁴⁾ S.I. 1967/149.

⁽¹⁵⁾ Section 222 was amended by section 200(1) of the Finance Act 1993.

(2) Where any such irregularity comes to the attention of a Tribunal, the Tribunal, before reaching its decision, may, and if it considers that any person may have been prejudiced by that irregularity shall, give such directions as it thinks just to cure or waive the irregularity.

(3) Clerical mistakes in any document recording a direction or decision of a Tribunal, or errors arising in such a document from an accidental slip or omission, may be corrected by the Special Commissioner presiding at the hearing or any other of the Special Commissioners comprising the Tribunal, or by the Presiding Special Commissioner if all the Special Commissioners comprising the Tribunal have died or ceased to be Special Commissioners, by certificate under his hand.

Notices

26. Every notice required by these Regulations shall be in writing unless a Tribunal authorises it to be given orally.

Service

27.—(1) Any notice or other document (other than a summons under regulation 5) required or authorised by these Regulations to be sent or delivered to, or served on, any person shall be duly sent or delivered to, or served on, that person—

- (a) if it is sent to him at his proper address by post; or
- (b) if it is sent to him at that address by facsimile transmission or other similar means which produce a document containing a text of the communication, in which event the document shall be regarded as sent when it is received in a legible form; or
- (c) if it is delivered to him or left at his proper address.

(2) Any such document may—

- (a) in the case of a body corporate, be sent or delivered to, or left with, the secretary or clerk of that body;
- (b) in the case of a foreign body corporate, be sent or delivered to, or left with, the person authorised to accept service of process on it;
- (c) in the case of a partnership, be sent or delivered to, or left with, any partner;
- (d) in the case of an unincorporated association other than a partnership, be sent or delivered to, or left with, any member of the governing body of the association.

(3) For the purposes of this regulation, a person's proper address is—

- (a) in the case of the secretary or clerk of a body corporate registered in the United Kingdom, the address of the registered or principal office of that body corporate;
- (b) in the case of the person authorised to accept service of process on a foreign body corporate, the address of the principal office or place of business of that body corporate in the United Kingdom;
- (c) in the case of the Special Commissioners or their Clerk, the address of the Clerk;
- (d) in the case of any other person, the usual or last known address of that person.

Substituted service

28. If any person to or on whom any notice or other document (other than a summons under regulation 5) is required to be sent, delivered or served for the purposes of these Regulations cannot be found or has died and has no known representative, or is out of the United Kingdom, or if for any other reason service on him cannot be readily effected, a Tribunal may dispense with the requirement that the notice or other document be sent or delivered to, or served on him or may make an order

for substituted service on such other person or in such other form (whether by advertisement in a newspaper or otherwise) as the Tribunal may think fit.

Dated 5th July 1994

Mackay of Clashfern, C

Dated 6th July 1994

Rodger of Earlsferry

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for the procedure and practice to be followed in connection with appeals to, and other proceedings before, the Special Commissioners and also deal with jurisdictional matters relating to such proceedings. Regulations governing procedure and jurisdiction have also been made in relation to the General Commissioners (S.I.1994/1812), and a third set of Regulations contains amendments and repeals of primary and secondary legislation relating to procedure and jurisdiction in proceedings before the General Commissioners and Special Commissioners (S.I. 1994/1813).

The Regulations are in a number of parts, of which Part I (regulations 1 and 2) is introductory. Regulation 1 provides for citation, commencement and application, and regulation 2 contains definitions.

Part II (regulations 3 to 12) deals with the listing of proceedings (regulation 3), and matters preparatory to the hearing of proceedings, namely the power of the Special Commissioners to give directions (regulation 4) or summon witnesses (regulation 5), agreement on documentary and expert evidence (regulations 6 and 12), joining of additional parties (regulation 8), preliminary hearings (regulation 9), the power of the Special Commissioners to obtain information (regulation 10), and joining and postponement of proceedings (regulations 7 and 11).

Part III (regulations 13 to 21) deals with the hearing itself, and includes regulations relating to representation at the hearing (regulation 14), hearings in public or in private (regulation 15), failure to attend the hearing (regulation 16), procedure and evidence at the hearing (regulation 17), decisions of the Special Commissioners and publication of those decisions (regulations 18 to 20), and costs (regulation 21).

Part IV (regulations 22 to 24) provides special procedural rules for capital gains tax appeals where questions relating to the market value of assets are involved (regulation 22), for referring questions of value to other tribunals (regulation 23), and for the recovery of penalties (regulation 24).

Part V (regulations 25 to 28) contains miscellaneous provisions dealing with procedural irregularities (regulation 25), notices required by the Regulations (regulation 26) and service of documents (regulations 27 and 28).