
STATUTORY INSTRUMENTS

2009 No. 403 (C. 24)

**INCOME TAX
CORPORATION TAX
CAPITAL GAINS TAX
VALUE ADDED TAX**

The Finance Act 2008, Schedule 39 (Appointed Day,
Transitional Provision and Savings) Order 2009

Made - - - - 26th February 2009

The Treasury make the following Order in exercise of the powers conferred by section 118(2) and (3) of the Finance Act 2008⁽¹⁾.

Citation and interpretation

1.—(1) This Order may be cited as the Finance Act 2008, Schedule 39 (Appointed Day, Transitional Provision and Savings) Order 2009.

(2) In this Order a reference to a paragraph (without more) is a reference to that paragraph of Schedule 39 to the Finance Act 2008.

(3) In this Order—

“the Taxes Acts” has the meaning given in section 118(1) of the Taxes Management Act 1970⁽²⁾;

“TMA 1970” means the Taxes Management Act 1970;

“VATA 1994” means the Value Added Tax Act 1994⁽³⁾.

Appointed days

2.—(1) The day appointed for the coming into force of paragraphs 32 to 36 is 1st April 2009.

(2) Subject to article 10(2), the day appointed for the coming into force of paragraphs 1 to 31 and 37 to 66 is 1st April 2010.

(1) 2008 c. 9.

(2) 1970 c. 9.

(3) 1994 c. 23.

Transitional provisions and savings

3. Paragraph 33 is disregarded where, for the purposes of section 33A of VATA 1994(4) (refunds of VAT to museums and galleries), the day on which the supply was made or the acquisition or importation took place was on or before 31st March 2006.

4. Paragraph 34 is disregarded—

- (a) where, for the purposes of section 77 of VATA 1994(5) (assessments: time limits and supplementary assessments), the end of the prescribed accounting period or the importation, acquisition or event giving rise to the penalty, as appropriate, occurred on or before 31st March 2006, and
- (b) where, after a person's death, a sum is assessed as due by reason of some conduct (however described) of the deceased, including a sum due by way of penalty, interest or surcharge, and the date of the death is on or before 31st March 2006.

5. Paragraph 35 is disregarded where, for the purposes of a claim under section 78 of VATA 1994(6) (interest in certain cases of official error), the end of the applicable period to which the claim relates was on or before 31st March 2006.

6. Paragraph 36 is disregarded where, for the purposes of section 80 of VATA 1994(7) (credit for, or repayment of, overstated or overpaid VAT), the relevant date is on or before 31st March 2006.

7. Section 36(1A)(b) and (c) of TMA 1970(8) (fraudulent and negligent conduct) shall not apply where the year of assessment is 2008-09 or earlier, except where the assessment on the person ("P") is for the purposes of making good to the Crown a loss of tax attributable to P's negligent conduct or the negligent conduct of a person acting on P's behalf.

8. Paragraph 46(2A)(b) and (c) of Schedule 18 to the Finance Act 1998(9) (general time limits for assessments) shall not apply where the end of the accounting period to which the assessment relates is on or before 31st March 2010, except in a case involving negligence on the part of—

- (a) the company, or
- (b) a person acting on behalf of the company, or
- (c) a person who was a partner of the company at the relevant time.

9. Section 77(4A)(c) and (d) of VATA 1994(10) (value added tax: assessments: time limits and supplementary assessments) shall not apply where the end of the prescribed accounting period or the importation, acquisition or event giving rise to the penalty, as appropriate, occurred on or before

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- (4) Section 33A was inserted by section 98(2) of the Finance Act 2001 (c. 9); section 33A is prospectively amended by paragraph 33 of Schedule 39 to the Finance Act 2008 (c. 9).
 - (5) Subsection (1)(a) and (b) were amended by paragraph 34(2) of Schedule 39 to the Finance Act 2008. Subsections (4) and (4A) to (4C) were substituted for subsection (4) by paragraph 34(3) of that Schedule.
 - (6) Subsection (3) was amended by section 197(6)(d) of the Finance Act 1996 (c. 8). Subsection (1A) was inserted and subsection 12(a) substituted by section 44(1) and (3) of the Finance Act 1997 (c. 16). Subsection (11) was substituted by section 44(2) of the Finance Act 1997. Subsection (8), (8A) and (9) were substituted by section 44(4) and (5) of the Finance Act 1997. Subsection (1)(a) was amended by section 4(1) and (2) of the Finance (No. 2) Act 2005 (c. 22). Subsection (11) is prospectively amended by paragraph 35 of Schedule 39 to the Finance Act 2008.
 - (7) Subsections (3A) to (3C) were inserted by section 46(1) to the Finance Act 1997. Subsection was substituted for subsections (4) and (5) by section 47(1) of the Finance Act 1997. Subsections (4A) to (4C) were inserted by section 47(1) of the Finance Act 1997. Subsections (1) to (1B) were substituted for subsection (1); subsection (2) was amended; subsection (2A) was inserted; subsection (3) amended; subsections (3A) and (7) substituted; subsection (3B)(a); subsections (4) to (4ZB) and (4A) substituted; and Heading substituted by section 3 of the Finance (No. 2) Act 2005. Subsection (4) is prospectively amended by paragraph 36 of Schedule 39 to the Finance Act 2008.
 - (8) Section 36(1), (1A) and (1B) were substituted for section 36(1) by paragraph 9(2) of Schedule 39 to the Finance Act 2008.
 - (9) 1998 c. 36; sub-paragraphs (2), (2A) and (2B) of paragraph 46 of Schedule 18 were substituted for paragraph 46(2) by paragraph 42(3) of Schedule 39 to the Finance Act 2008.
 - (10) Subsection 1(a) and (b) were amended by paragraph 34(2) of Schedule 39 to the Finance Act 2008; subsections (4) and (4A) to (4C) were substituted for subsection (4) by paragraph 34(3) of that Schedule.

31 March 2010, except where VAT has been lost in circumstances giving rise to a penalty under section 67 of VATA 1994(11) (failure to notify and unauthorised issue of invoices).

10.—(1) This article applies where an event specified in paragraph 4 below relates to a year of assessment in respect of which a person (“P”) has not been given notice under—

- (a) section 8 of TMA 1970(12) (personal return),
- (b) section 8A of TMA 1970(13) (trustee’s return), or
- (c) section 12AA of TMA 1970(14) (partnership return),

within one year of the end of the year of assessment.

(2) Where this article applies, the day appointed for the coming into force of paragraphs 1 to 31 and 37 to 65 is 1st April 2012.

(3) But this article does not apply if, as regards P and a year of assessment, any income which ought to have been assessed to income tax or chargeable gains which ought to have been assessed to capital gains tax, have not been assessed, or an assessment to tax has become insufficient, or any relief which has been given has become excessive.

(4) The events referred to in paragraph (1) above are—

- (a) an assessment on P to income tax or capital gains tax,
- (b) a claim by or on behalf of P, provided for by any provision of the Taxes Acts, and
- (c) a notice given by P under section 711 of the Income Tax (Earnings and Pensions Act) 2003(15) (right to make a return).

(5) Nothing in this article has any application where P is a company.

Bob Blizzard
Steve McCabe

Two of the Lords Commissioners of Her
Majesty’s Treasury

26th February 2009

(11) Subsection (4) was amended by section 32(1), (3) and (4) of the Finance Act 1995 (c. 4). Subsection (1) and (3) were amended by section 37 of the Finance Act 1996 (c. 8). Subsection (1)(a), (3)(a) and (3)(b) were amended by section 136(2) of the Finance Act 2000 (c. 17). Section 67 is repealed prospectively by paragraph 25(f) of Schedule 41 to the Finance Act 2008.

(12) Section 8 was substituted by section 90 (1) of the Finance Act 1990 (c. 29), and amended by sections 178(1) and 199(1) and (2) of the Finance Act 1994 (c. 9), section 104 of the Finance Act 1995 (c. 4) and section 121 of the Finance Act 1996 (c. 8), section 882(1) and paragraph 359 of Schedule 1 to the Income Tax (Trading and Other Income) Act 2005 (c. 5), section 88(4) of the Finance Act 2007 (c. 11) and section 34 of and paragraph 8 of Schedule 12 to the Finance Act 2008.

(13) Section 8A was inserted by section 90(1) and (5) of the Finance Act 1990 and amended by sections 178(2) and 199(1) and (2) of the Finance Act 1994 (c. 9), section 103(4) of the Finance Act 1995, section 121(1) and (3) of the Finance Act 1996, section 882(1) and paragraphs 357 and 360 of Schedule 1 to the Income Tax (Trading and Other Income) Act 2005 (c. 5), and 34 of and paragraphs 7 and 9 of Schedule 12 to the Finance Act 2008.

(14) Section 12AA was inserted by section 184 of the Finance Act 1994 and amended by sections 104(6) and 115(4) of the Finance Act 1995, sections 121, 123 and 124 of the Finance Act 1996, paragraph 3 of Schedule 19 to the Finance Act 1998 and paragraph 18 of Schedule 29 to the Finance Act 2001, section 882(1) and paragraph 363 of Schedule 1 to the Income Tax (Trading and Other Income) Act 2005, section 90(1) and (2) of the Finance Act 2007 and section 34 of and paragraph 11 of Schedule 12 to the Finance Act 2008.

(15) 2003 c. 1; section 711 was amended by paragraph 102(1) of Schedule 5 to the Commissioners for Revenue and Customs Act 2005 (c. 11); section 711(2) is prospectively amended by paragraph 49 of Schedule 39 to the Finance Act 2008.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order appoints the days on which the provisions of Schedule 39 to the Finance Act 2008 (c. 9) (“Schedule 39”) come into force. It also contains savings and transitional provisions. Schedule 39 aligns the time limits for assessments and claims etc across income tax, corporation tax and value added tax (VAT).

Article 2(1) appoints 1st April 2009 as the day on which paragraphs 32 to 36 of Schedule 39 come into force. These paragraphs make changes to VAT time limits. Article 2(2) appoints 1st April 2010 as the day on which paragraphs 1 to 31 and 37 to 66 come into force (subject to the transitional provisions contained in article 10). These paragraphs make changes to income tax and corporation tax time limits.

Articles 3 to 6 make savings for the purpose of changes to VAT time limits.

Article 3 concerns the change in time limits from 3 to 4 years for refunds of VAT to museums and galleries under section 33A of the Value Added Tax Act 1994 (VATA 1994). It ensures this does not allow claims that are already out of time to be brought back within the time limit. As such, the 4-year time limit would not apply to a situation where the day on which the supply was made or the acquisition or importation took place was on or before 31st March 2006.

Article 4 concerns the change in time limits from 3 to 4 years for VAT assessments under section 77 of VATA 1994. It ensures this does not allow assessments that are already out of time to be brought back within the time limit. As such, the 4-year time limit would not apply where the end of the prescribed accounting period or the importation, acquisition or event giving rise to the penalty, as appropriate, occurred on or before 31st March 2006. It makes similar provision for the time limit on assessments due by reason of some conduct of the deceased. The 4-year time limit will not apply if the date of the death was on or before 31st March 2006.

Article 5 concerns the change in time limits from 3 to 4 years for claims for interest in certain cases of official error under section 78 of VATA 1994. It ensures this does not allow claims that are already out of time to be brought back within the time limit. As such, the 4-year time limit would not apply where the end of the applicable period to which the claim relates was on or before 31st March 2006.

Article 6 concerns the change in time limits from 3 to 4 years for claims for credit for or repayment of overstated or overpaid VAT under section 80 of VATA 1994. It ensures this does not allow claims that are already out of time to be brought back within the time limit. As such, the 4-year time limit would not apply where the relevant date is on or before 31st March 2006.

Article 7 makes transitional provision for the new subsections 36(1A)(b) and (c) of the Taxes Management 1970, which apply an extended time limit for assessing income tax or capital gains tax where there is a failure to notify liability or a failure to notify an avoidance scheme as required by section 309, 310 or 313 of the Finance Act 2004. It ensures this provision is not retrospective. For the tax years 2008-09 and earlier, the extended time limit will only apply if it also applied under the previous rules, namely if there has been negligent conduct.

Article 8 makes similar provision to article 4 for corporation tax. It makes transitional provision for the new sub-paragraphs 46(2A)(b) and (c) of Schedule 18 to the Finance Act 1998, which apply an extended time limit for assessing income tax or capital gains tax where there is a failure to notify liability or a failure to notify an avoidance scheme as required by section 309, 310 or 313 of the Finance Act 2004. It ensures this provision is not retrospective. For accounting periods ending on or

before 31 March 2010, the extended time limit will only apply if it also applied under the previous rules, namely if there has been negligence.

Article 9 makes transitional provision for the new sections 77(4A)(c) and (d) of VATA 1994, which apply an extended time limit for assessing income tax or capital gains tax where there is a failure to notify liability or a failure to notify an avoidance scheme as required by paragraph 6 of Schedule 11A to VATA 1994. It ensures this provision is not retrospective. For accounting periods ending, or importations, acquisitions or events on or before 31 March 2010, the extended time limit will only apply if it also applied under the previous rules, namely if there have been circumstances giving rise to a penalty under section 67 of VATA [or schedule 41 to the Finance Act 2008] for failure to notify or unauthorised issue of invoices.

Article 10 makes transitional provision where income tax or capital gains tax have been overpaid, to allow taxpayers to take the appropriate action by delaying the time limit changes by two years.

Paragraph 1 applies this transitional provision to years for which the taxpayer is outside self assessment. This is where the taxpayer has not been given notice to make a self assessment return within a year of the end of the tax year.

Paragraph 2 provides that for such years, the appointed day on which paragraphs 1 to 31 and 37 to 65 of Schedule 39 come into force is 1st April 2012, rather than 1st April 2010 as provided for by Article 2(2). These paragraphs do not include those related to VAT or Petroleum Revenue Tax.

Paragraph 3 provides that this two-year delay shall only apply where tax has been overpaid.

Paragraph 4 sets out the actions to which time limits apply. These are: assessments, including self assessments, claims and a notice requiring Her Majesty's Revenue and Customs to issue a return. The reference to "claims" includes elections, by virtue of section 42(10) of the Taxes Management Act 1970.

Paragraph 5 provides that the delay shall not apply for companies.