

Notes for Guidance - Taxes Consolidation Act 1997

Finance Act 2018 edition

Part 39 Assessments

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PART 39 ASSESSMENTS

CHAPTER 1

Income tax and corporation tax

Overview

This Chapter provides for the making of income tax and corporation tax assessments, including additional assessments (*sections 918, 919, 922, 924 and 925*), the granting of allowances and reliefs (*section 920*) and the aggregation of assessments (*section 921*). It also sets out the functions of certain assessors (*section 923*), provides for the estimation of income in assessments assessed on a current year basis (*section 926*) and the recovery of any excessive set-off or payment of tax credit (*section 927*). Finally, it provides for the transmission of particulars of sums to be collected to the Collector-General (*section 928*).

In the case of persons within the Self Assessment system the provisions of *Part 41*, in particular *sections 954, 955 and 956*, should be consulted so as to obtain a full picture of the provisions relating to assessments.

NB: *Section 129 of the Finance Act 2012 has deleted Part 39 (and Part 41) as respects the tax year 2013 (and subsequent years) and accounting periods of companies that start on or after 1 January 2013. For those years and periods, the provisions of Part 41A (as inserted by the Finance Act 2012) apply.*

918 Making of assessments under Schedules C, D, E and F

Summary

In general, assessments in respect of trading/professional income, investment/ property income (Schedule D), employment income (Schedule E) and dividend income (Schedule F) are made by inspectors or other officers appointed by the Revenue Commissioners in that behalf.

Details

Assessments under Schedules D, E and F are made by inspectors or other officers appointed by the Revenue Commissioners, except in the case of — (1)

- foreign income dividends (*Chapter 2 of Part 4*),
- income assessed by the Governor and directors of the Bank of Ireland (*section 853*), and
- income of certain public offices assessed by an officer or person appointed by the Revenue Commissioners with the approval of the Minister for Finance (*section 854*).

An inspector must send a notice of assessment to the assessed person detailing the amount of the assessment and the time limit for making an appeal. (2)

Anything required to be done by the Revenue Commissioners in making an assessment under Schedule C or D may be delegated to other officers of the Revenue Commissioners. (3)

Where a person has 2 or more sources of Case IV Schedule D income chargeable under (4)

section 98 (treatment of premiums, etc as rent), **section 99** (charge on assignment of lease at undervalue) or **section 100** (charge on sale of land with right to reconveyance), the income may be assessed in one assessment.

919 Assessments to corporation tax

Summary

Assessments to corporation tax are made by an inspector. Where an inspector is not satisfied with the company's statement, or if the company fails to deliver a statement, the inspector must assess the company to the best of his/her judgement. Where an inspector discovers profits have not been assessed or were under-assessed, the inspector must make an assessment on this additional amount but, in general, no assessment may be made under this section more than 4 years after the end of the accounting period to which it relates, except in the case of fraud or neglect where there is no time limit on the making of assessments. An assessment for an accounting period after the commencement of a winding-up is still valid even if made before the end of the accounting period.

Details

Assessments to corporation tax are made by an inspector. (1)

In the case of a resident company assessed to corporation tax, the assessment is made on the company. In the case of a non-resident company, the assessment is made on the company in the name of an agent, manager, factor or other representative of the company. (2)

The inspector must send a notice of assessment to the company or in the case of a non-resident company to the company's agent or representative. (3)

Where a company fails to deliver a statement in respect of corporation tax, or the inspector is not satisfied with the statement or has received information (including information received from a member of the Garda Síochána) as to its insufficiency, the inspector must make an assessment on the company to the best of his/her judgement. (4)

Where an inspector discovers that — (5)(b)

- any profits which should have been assessed to corporation tax have not been assessed,
- an assessment is insufficient, or
- excessive relief was given,

the inspector must make an assessment on this additional amount.

In general, no assessment to corporation tax may be made more than 4 years after the end of the accounting period to which it relates. (5)(c)

However, there is no time limit in the case where any form of fraud or neglect has been committed by or on behalf of the company. For this purpose, "neglect" means negligence or failure to give a notice, make a return or statement or produce or furnish lists of information under enactments relating to corporation tax, but a company is not regarded as being negligent if it provides the information within a time extension granted by Revenue. Furthermore, a company with a reasonable excuse for failing to provide information, or failing to make a return or give a notice, will not be regarded as negligent provided the information is given or return made without undue delay after the excuse expires. (5)(a) & (d)

An objection that an assessment is outside the time limit can only be made on appeal against the assessment. (5)(e)

An assessment on a company's profits for an accounting period after the commencement of a winding-up is not invalid because it was made before the end of the accounting period. (6)

920 Granting of allowances and reliefs

The inspector or other appointed officer of the Revenue Commissioners may grant any allowance, deduction or relief authorised by the Income Tax Acts in relation to any income tax assessment. (1)

The assessment is deemed to be amended when any such allowance, deduction or relief is granted. (2)

921 Aggregation of assessments

Summary

Where 2 or more assessments to income tax under Schedule D, E, or F are to be made on a person, the tax may be stated as one sum. Where assessments are aggregated a notice of appeal must state each assessment being appealed. While the appeal is being determined the tax due on the amounts not under appeal must be paid after deduction of the appropriate personal reliefs.

Details

The "personal reliefs" are the personal allowances and reliefs under the provisions specified in the Table to *section 458*. (1)

Where 2 or more assessments to income tax are made on a person under either Schedule D, E or F the notice of assessment may state the tax due in one sum. (2)

In a case where assessments are aggregated, a notice of appeal must state each assessment which is being appealed. (3)

While an appeal is being determined the tax due on the assessments not under appeal, after deduction of personal reliefs, must be paid. (4)

The tax due under *subsections (2) and (4)* is deemed, for the purposes of *section 1080* (interest on overdue income tax) and *section 1081* (effect on interest of reliefs given by discharge or repayment), to be charged by a single assessment to income tax. (5)

A certificate from the inspector indicating the allocation of deductions, allowances or reliefs and the separate amounts of tax under each assessment is sufficient evidence of the charge to tax in each assessment. (6)

922 Assessment in absence of return

In this section "information" includes information received from a member of the Garda Síochána. (1)

If an inspector does not receive a statement from a person liable to be charged to income tax, the inspector must, to the best of his/her information and judgement, make an assessment on the person on the amount in respect of which the person ought to be charged under Schedule E. This rule is subject to *section 997* which provides that, in general, assessments under Schedule E need not be made on persons taxed under PAYE. (2)

If an inspector does not receive a statement from a person in respect of income tax under Schedule D or F, or the inspector is not satisfied with a statement which has been made or has received information as to the insufficiency of such a statement, the inspector must, to the best of his/her judgement, make an assessment on the person on the amount (3)

which ought to be charged on the person.

923 Function of certain assessors

Summary

This section sets out the functions of persons who are appointed assessors under *sections 854* and *855*.

Details

An assessor appointed under *section 854* (appointment of persons for purposes of assessment of certain public offices) or *section 855* (declaration to be made by Commissioners) must be furnished free of charge by any officer or agent in the relevant department or office with true accounts of any salaries, wages, pensions, etc chargeable under Schedule E. The assessor is entitled to all documents concerning such payments. If dissatisfied with the accounts, the assessor may require any employee or pension holder to deliver a statement of profits or gains and, in relation to such requests, the same time limits and penalties apply as for the making of statement of profits for income tax. (1)

The assessors must assess all employees and pension holders by reference to the annual amount shown in the documents in their respective departments. (2)

Every assessment must show the names of the employees and pension holders, the full annual emoluments or pensions and the tax payable in each case. (3)

An assessor who does not meet his/her obligations is liable to a penalty of between €25 and €125. (4)

924 Additional assessments

Summary

An inspector may make an additional first assessment on a taxpayer where the inspector discovers the taxpayer has been undercharged in the first assessment or has not been assessed to income tax under Schedule D, E or F. The additional assessment must be made within 4 years after the end of the year of assessment, except in cases of fraud or neglect where there is no time limit on the making of assessments.

Details

An inspector must make an additional first assessment to tax under Schedule D, E or F when — (1)(a)

- any property or profits were not included in the first assessment,
- the taxpayer has not delivered any statement or a full proper statement, has not been assessed to income tax or has been undercharged in the first assessment, or
- the taxpayer has been allowed an unauthorised allowance, deduction, exemption or relief.

The additional first assessment is subject to the same rights of appeal as the first assessment. (1)(b)

In general, an additional assessment may be made not later than 4 years after the end of the year to which the assessment relates. (2)(b)

However, there is no time limit for additional assessments made in the case of fraud or neglect. For this purpose, “neglect” means negligence or failure to give a notice or make a return or statement or produce or furnish lists of information under the Income Tax Acts, but a person will not be regarded as being negligent if he/she provides the infor- (2)(a) & (c)

mation within a time extension granted by Revenue. Furthermore, a person with a reasonable excuse for failing to provide information, or failing to make a return or give a notice, will not be regarded as negligent provided the information is given or the return is made without undue delay after the excuse expires.

In the case where emoluments assessable under Schedule E, including termination payments on retirement and benefits in kind, are received during a year but relate to a previous year of assessment, the 4 year time limit runs from the year in which the emoluments are received. (2)(d)

An objection that the assessment or additional assessment is outside the time limit can only be made on appeal against the assessment. (2)(e)

An additional assessment is added to a first assessment by a separate form of assessment. (3)

925 Special rules relating to assessments under Schedule E

Where a person becomes entitled to any additional salary, fees or emoluments for a year in which an assessment to income tax has already been made, an additional assessment or assessments is or are to be made on the person until the full amount of the salary, fees or emoluments have been charged to income tax. (1)

Where a person proves to the inspector that an assessment to income tax in respect of the person's salary, fees or emoluments exceeds the actual amount of salary, fees or emoluments received for the year, the assessment will be adjusted and the overpaid tax repaid. (2)

926 Estimation of certain amounts

Where an assessment to income tax is being made before the end of the year of assessment (to which the assessment relates) on income taxable on a current year basis and the inspector is required to estimate the income and allowable deductions, he/she is to have due regard to the income, deductions and tax credits of the preceding year. (1)

If the taxpayer does not appeal against this assessment and within one year from the end of the year of assessment supplies details of the correct amount of income and deductions, the inspector will adjust the assessment and any overpaid income tax will be repaid. (2)

927 Rectification of excessive set-off, etc of tax credit

Where an inspector discovers that an incorrect or excessive tax credit has been paid, the inspector may make an assessment to recover the excess. (1)

The normal assessment (*this Part*), collection (*Part 42*) and appeal (*Part 40A*) procedures apply in relation to such an assessment as if it were an assessment to income tax for the year of assessment for which the payment was claimed (or, in the case of a company, an assessment to corporation tax for the accounting period for which the payment was claimed). Once the assessment is not appealed, any sum charged is due within 14 days of the notice of assessment. (2)

928 Transmission to Collector-General of particulars of sums to be collected

This subsection contains definitions used in the section, viz. (1)

- “assessment” and “Revenue officer” have the same meanings as they have in *Chapter 1A* of *Part 42*;
- “tax” means income tax, corporation tax, capital gains tax, value-added tax, excise

duty, stamp duty, gift tax and inheritance tax.

After assessments to tax have been made, the inspectors or other Revenue officers must transmit particulars of the sums to be collected to the Collector-General or to a Revenue officer nominated in writing under *section 960B*. (2)

The entering by an inspector or other Revenue officer of details of an assessment to tax and of the tax charged in such an assessment in an electronic, digital, magnetic, optical, electromagnetic, biometric, photonic, photographic or other record from which the Collector-General or a Revenue officer nominated in writing under *section 960B* may extract such details by electronic, etc. process will be treated as transmission of such details by the inspector or other Revenue officer to the Collector-General or to the Revenue officer nominated in writing under *section 960B*. (3)

CHAPTER 2

Provision against double assessment and relief for error or mistake

Overview

This Chapter provides relief for a person doubly assessed to income tax or corporation tax (*section 929*).

929 Double assessment

A person who, due to error or mistake, has been doubly assessed to income tax for the same year of assessment (or to corporation tax for the same accounting period) for the same cause may apply to the Appeal Commissioners to have the second assessment discharged. (1)

Where the Revenue Commissioners are satisfied that a person has been doubly assessed, they may also cancel the second assessment. (2)

If tax was paid on both assessments, the amount overpaid is to be repaid notwithstanding the general time limit for making a claim for a repayment of tax set out in *section 865*. (3)

930 Error or mistake

NOTE: *By virtue of the Finance Act 2003 (Commencement of section 17) Order (S.I. No. 508 of 2003), this section was deleted with effect from 1 January 2005 but without prejudice to any claim for relief made under the section before that date.*

CHAPTER 3

Capital gains tax

931 Making of assessments and application of income tax assessment provisions

Capital gains tax assessments are to be made by inspectors or other officers appointed by Revenue. (1)

Subject to any necessary modifications, the rules relating to the assessment of income tax apply for capital gains tax assessment in the same way as they apply in relation to income tax chargeable under Schedule D. (2)

Without prejudice to the general application of those rules, certain income tax assessment provisions are specifically applied, subject to any necessary modifications, for the (3)

purposes of capital gains tax. The provisions so applied are those governing —

- the making of assessments (*section 918*),
- the granting of allowances and reliefs (*section 920*),
- assessment in absence of return (*section 922*),
- additional assessments (see *section 924*),
- transmission to Collector-General of particulars of sums to be collected (*section 928*),
- double assessment (*section 929*), and

In the case of persons within the Self Assessment system the provisions of *Part 41*, in particular *sections 954, 955* and *956* should also be consulted. However, as respects the tax year 2013 (and subsequent years) and accounting periods of companies that start on or after 1 January 2013, the provisions of *Part 41A* (as inserted by Finance Act 2012) apply.

By virtue of *section 871* any assessment to capital gains tax may be combined with one relating to income tax or, as the case may be, corporation tax.