

GUIDANCE IN TAXATION CASES UNDER PART 6 OF THE PROCEEDS OF CRIME ACT 2002

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Introduction and General Principles

Under Part 6 of the Proceeds of Crime Act 2002, the Director of the Assets Recovery Agency may assume the functions and powers of the Inland Revenue, including the right to investigate the tax affairs of an individual and/or company, raise a discovery tax assessment, issue penalties and enforce any tax debts. It is the Director's intention to use those powers to the full in pursuit of her statutory objective to reduce crime.

The Revenue publishes its practices and policy including on how it will conduct an investigation and legal proceedings in relation to any individual or company tax. The aim of this guidance is to do the same for ARA.

Any individual or company whose tax affairs are being investigated by ARA **MUST** check the ARA website for guidance as to how their case will be dealt with and should **NOT** rely upon the guidance provided by the Inland Revenue.

In writing this guidance ARA has fully taken account of the Revenue's published guidance.

This guidance set out the general principles which the Director will apply in individual cases. The Director may depart from those general principles if she considers it appropriate in achieving her statutory objective.

Publicity

1. Where matters have been to court or tribunal, the details of the court proceedings, including the taxpayer's name, may be published unless the proceedings were held in private.
2. At the assessment stage, and where no court proceedings have been concluded, full confidentiality as to the taxpayer's name and details will be maintained.

Assessments

3. Any individual who receives a tax assessment under section 29 of the Taxes Management Act 1970 (“TMA”), will have 30 days to appeal their tax assessment under section 31(A) of the TMA. Any individual or company may, if they so wish, negotiate with the Director at any time.
4. Where a taxpayer accepts the assessments, enforcement proceedings will take place immediately.

Appeals

5. Any person and/or company whose tax affairs are the subject of investigation by ARA has the same rights of appeal as any other taxpayer. Any appeal will be to the Special Commissioners of Income Tax, appointed by the Secretary of State for Constitutional Affairs and Lord Chancellor. The Special Commissioners of Income Tax are an independent tribunal administered by the Department for Constitutional Affairs and entirely separate from both the Inland Revenue and the Assets Recovery Agency.
6. However, once the Director receives an appeal it will be her general practice to pass it immediately to the Special Commissioners of Income Tax to be listed for hearing unless there are exceptional reasons for not doing so.
7. This will give the taxpayer the opportunity to negotiate up to the hearing before the Special Commissioners of Income Tax and, if applicable, into any further appeal stages.
8. Once an appeal is determined then enforcement will take place immediately. A further right of appeal against decisions of the Special Commissioners of Income Tax lies to the High Court.

Late Appeals

9. Where the taxpayer simply declines either to appeal or to accept the assessment but puts in an application for a late consideration of their right of appeal under section 49 TMA, such an application will be opposed unless the Director considers it is obviously in the interests of justice to accept it. An application for late consideration that does not receive consent will be referred for final determination by the Special Commissioners of Income Tax.
10. If a late appeal is refused, enforcement proceedings will take place immediately. If the appeal is granted then the matter would proceed as indicated, above, in respect of appeals lodged before the Special Commissioners.

Penalties

11. Penalties will be issued. The issuing of penalties may be appealed to the Special Commissioners of Income Tax.
12. They may be abated if the taxpayer cooperates and negotiates with the Director. The extent of abatement will depend on the facts of each case and on factors such as cooperation, supply of information and negotiation.

13. The issuing of penalties and abatement will not prevent ARA from passing an appeal once it is received to the Special Commissioners of Income Tax to be listed for hearing.