

[4.3.5] Cessation of a trade or profession or change in accounting date – review of preceding year

1. Introduction:

This memo gives instructions on the approach to be adopted when a revision of a preceding year is required either because of the permanent cessation of a trade or profession or because of a change in accounting date.

Appendix 1 contains the text of an article which appeared in issue 43 (April 2001) of Tax Briefing regarding the obligations of taxpayers where such adjustments are required.

2. Procedure in processing areas:

Where there is an indication from the return that an adjustment for the preceding year is required the adjustment should be calculated at that stage, if the figures necessary to do the review are available e.g. if the agent calculates the revised profits for the preceding year. Where the review would hold up the processing of returns, the cases should be noted for review and dealt with as soon as possible after processing of returns is completed.

Where the assessment for the preceding year is amended by the processing area, the taxpayer will generally have complied with the requirement to inform the Inspector of the cessation/change in accounting date and provided sufficient information to do the review. In these cases, the due date for any additional tax will generally be 1 month from the date of the amendment.

3. Procedure in audit cases:

Where a review for a preceding year under sections 65 or 67 comes to light when a case is selected for audit, the question of interest and penalties should be dealt with in the light of the Tax Briefing article.

4.3.5

Appendix 1

Where a trade or profession is treated as ceasing permanently and the taxpayer has been charged for the tax year preceding the year of cessation on the basis of the profits of a period of 12 months ending in that year, the assessment for that year must be increased to the profits of that tax year [section 67 Taxes Consolidation Act, 1997]. Similarly, where in a tax year there is a change in accounting date, the assessment for the preceding year must be increased to the profits of a corresponding period of 12 months [section 65(3) Taxes Consolidation Act, 1997]. A question has arisen as to whether the taxpayer is required to bring an adjustment for the preceding year to the notice of Revenue.

Section 879 Taxes Consolidation Act, 1997 provides that the amount of profits or gains to be included in a return of income are the profits computed in accordance with the Income Tax Acts. Where under section 65 the profits of a year ending on a date within the year of assessment are to be taken as the profits of a year of assessment, the profits to be included in the return are the profits of that 12 month period.

Where an adjustment under either section 67 or section 65(3) is required the computation of the profits to be included in the return for the preceding year is changed. In the case of a cessation, the taxpayer is charged on the profits of the year preceding the year of cessation; in the case of a change in accounting date, the taxpayer is charged on the profits of a corresponding period of 12 months ending in the tax year. Accordingly, the profits or gains returned for the preceding year are no longer the profits or gains on which the taxpayer is to be charged to tax and the return requires amendment. The return is no longer correct, in view of the adjustment that is required.

Section 1084(1)(b)(ii) provides that where a person delivers an incorrect return but does not do so either fraudulently or negligently and it comes to that person's notice, that person will be regarded as not having delivered a timely return unless the error is rectified without unreasonable delay. Where the error is not so rectified, a surcharge will arise.

Section 1053(3) Taxes Consolidation Act, 1997 [Penalty for fraudulently or negligently making an incorrect return] is in similar terms to section 1084(1)(b)(ii). It treats a return as having been made negligently where an error is not corrected without unreasonable delay.

In the case of a return that requires to be corrected by reference to a review under either section 67 or section 65(3), the taxpayer will be regarded as having remedied the error without unreasonable delay if he or she brings the cessation or the change in accounting date to the attention of the Inspector when making a timely return for the tax year in which the cessation or change in accounting date takes place. The figures necessary for the Inspector to do the review should be provided at that stage. To minimise delays, we would ask tax practitioners to provide a computation of the revised profits chargeable for the year. The Inspector can then process these figures in accordance with self-assessment principles.

The additional tax due as a result of such an amendment will be due one month from the date of the amendment provided the taxpayer's return for the year is otherwise complete [section 958(8)(b) Taxes Consolidation Act, 1997]. With effect from 6 April 2001, additional tax due as a result of an amendment under section 65(3) will be due and payable on or before the specified return date for the following year of assessment.

The treatment of revisions due under section 65(3) will also apply to any revisions necessary under the new subsections (3C), (3D) or (3F) of section 65 which have been introduced by Schedule 2 Finance Bill 2001 – change-over to calendar year of assessment. The due date for tax as a result of these amendments is one month from the date of the amendment provided the return for the year is otherwise complete.

A more recent version of this manual is available.