

## Time limits for raising assessments and making enquiries – section 955 TCA 1997

### Part 37-00-31

This document should be read in conjunction with section 955 of the Taxes Consolidation Act 1997

Document last reviewed June 2017

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## Introduction

Section 955(2)(a) TCA 1997, which applies to years of assessment prior to 2013 and accounting periods ending on or before 31 December 2012, provides that where a tax return for a chargeable period contains a full and true disclosure of all material facts necessary for the making of an assessment for that period, that no assessment or amendment to an assessment can be made later than 4 years after the end of the chargeable period in question.

### 1. Exceptions to 4 year time limit in section 955(2)(a) TCA 1997

It is important point to note is that if a chargeable person has not met the condition of making a full and true disclosure of all material facts, there is no time limit, and an assessment can be made at any time in these circumstances.

Where a return has not met the full and true disclosure requirement, e.g. by the omission of certain income, the chargeable person may correct the position by submitting an amended return. Where the amended return gives the necessary full and true disclosure, no assessment or amendment may be made later than 4 years after the end of the chargeable period to which the amended return is filed.

Section 955(2)(b), which contains a number of exceptions to the 4 year time limit in section 955(2)(a), allows an amended assessment to be made at any time:

- where a return does not contain a full and true disclosure;
- to give effect to the outcome of an appeal against an assessment;
- to take account of a matter arising by reason of an event occurring after the making of a return;
- to correct an error in calculation;
- to correct any mistake where the correction results in aligning the assessment with the position as disclosed by the chargeable person.

Section 955(2)(b) also provides that section 955 does not affect the time limits set down for the making of assessments in relation to the estates of deceased persons.

There is no time limit for the raising or amending of assessments in cases of fraud or neglect (section 956(2)(c) TCA 1997).

## 2. Practical Examples

### Example 1 - Full and true disclosure

Mr. Sharp filed his tax return for the year 2012 on 31 July 2013 (before the return filing date for 2012). The return contained a full and true disclosure of all income and material facts for the making of an assessment to income tax for 2012.

The latest date by which an income tax assessment for 2012 or any amendment to an assessment may be made is 31 December 2017 (i.e. 4 years after the end of the year in which the return was filed).

### Example 2 - Income omitted

Mr. Duddy filed his tax return for 2012 on 30 September 2013 (before the return filing date for 2012). The inspector made an assessment based on the return on 10 October 2013. However, through an oversight, Mr. Duddy forgot to disclose rental income amounting to €5,000 and wrote to his inspector on 31 January 2014 with a computation disclosing this income and confirming that he has no other undisclosed income. The inspector agreed to accept the letter and the original return as a full and true disclosure, but as one filed in the tax year 2014.

The latest date by which an income tax assessment for 2012 or any amendment to an assessment may be made is 31 December 2018 (i.e. 4 years after the end of the year in which the return was treated as having being filed).

### Example 3 - Genuine expression of doubt case

Where a person has a genuine doubt as to the tax treatment of any item to be included in the return and he/she includes the item in a tax return but expresses doubt under Section 955 (4) TCA, 1997 to the Inspector over the treatment, then the person is treated as having made a full and true disclosure.

Miss Dashing filed her tax return for 2012 on 30 September 2013 and expressed a doubt as to the tax treatment of a particular deduction, being unsure as to whether it was a revenue expense. On receipt of the return the inspector considered the matter and concluded that the doubt expressed was genuine and that the deduction was indeed revenue expenditure and thus an allowable deduction. An assessment was issued in accordance with Miss Dashing's interpretation on 20 January 2014.

Miss Dashing is treated as having made a full and true disclosure with her return filed on 30 September 2013.

In this example the latest date by which an income tax assessment or amendment to an assessment for the tax year 2012 may be made is 31 December 2017 (i.e. 4 years after the end of the year in which the return was filed).

### **Example 4 - Expression of doubt not genuine**

Miss Smart filed her tax return for 2012 on 31 October 2013. She claimed a significant deduction for legal fees incurred in connection with a tax appeal for a previous tax year and expressed doubt as to the deductibility of this item in a short note in the tax computation which she submitted with her return of income. She did not draw the inspector's attention to the expression of doubt by ticking the box on the front page of the return, nor did she put a covering note with the return highlighting the expression of doubt.

On receipt, the return was processed in accordance with Miss Smart's figures submitted and an assessment for 2012 was made. Twelve months later the Inspector while screening returns for audit notices that there was an expression of doubt, which was not drawn to the inspector's attention. On perusal of Miss Smart's file, he notices that she had corresponded with her local Revenue office on this issue and had been advised that the legal fees incurred were not deductible. The inspector now concluded that her doubt was not a genuine expression of doubt and that the return was not a full and true disclosure. There is no time limit in this case for the making of an amended assessment to disallow the legal expenditure as a deduction.

### **Example 5 - To give effect to outcome of an appeal**

Mr. Fast, an amateur sportsman, filed his tax return for 2011 on 31 October 2012 and an assessment was made in accordance with the return. Mr. Fast had failed to disclose payments received from winnings in respect of sporting events as he considered this activity to be a hobby and did not think it was taxable. His inspector conducted an audit of his tax affairs for the tax year 2012 in August 2015 and decided that Mr. Fast was indeed chargeable to tax on this income.

The inspector amended the assessment in September 2015 to reflect the additional income. Mr. Fast appealed the matter to the Appeal Commissioners. In 2017, the Tax Appeal Commissioner ruled in Mr. Fast's favour as he did not consider on the facts of the case that Mr. Fast was engaged in anything other than a hobby - he was not trading and the income was not a casual commission. The inspector did not express dissatisfaction with this determination of the Tax Appeal Commissioner.

In this case there is no time limit restriction on further amending the assessment in order to give effect to the outcome of Mr. Fast's appeal against the amended assessment.

### **Example 6 - Fraud - no time limit**

Mr. Dodgy filed a tax return for 2010 in October 2011. In addition to share disposal gains declared on his return he disclosed that he had sold a house for €1m and claimed principal private residence relief on the sale. This had the effect that no capital gains tax liability arose on the sale. In 2017 the local inspector discovered that Mr. Dodgy had never lived in the house in question. He had another property in which he lived. The inspector concluded that Mr. Dodgy fraudulently claimed principal private residence relief on the disposal. The inspector made an amended assessment on Mr. Dodgy for the capital gains tax liability arising on the €1m consideration for the disposal of the house.

Because the case involved fraud there is no time limit restriction on the making of an amended assessment.

## **3. Inspector's right to make enquiries and amend assessments**

Under Section 956(1) TCA 1997 an inspector may, in making or amending an assessment on a chargeable person, make such enquiries or take any other action which he/she thinks necessary, within his/her powers to check the accuracy or otherwise of the information given in the chargeable person's tax return.

This right to make enquiries or take any actions to check the accuracy of information in a chargeable person's return for a relevant chargeable period is subject to a 4 year time limit running from the end of the chargeable period in which the return is made.

There is no time limit in cases of fraud or neglect and enquiries can be made at any time in such cases.