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Introduction

Tax law is entirely a creature of **statute**. That means that tax may only be charged if there is an Act of Parliament that says it is chargeable.

This is an ancient right found in Magna Carta 1215 and Bill of Rights 1689. Tax cannot be charged by custom, under the common law, nor by order of judges, administrative decree, or royal proclamation.

An Act of Parliament must be passed by the House of Commons and (usually) the House of Lords. It then receives Royal Assent from the monarch.

The Act becomes law from **Royal Assent**, though some provisions of an Act may not take effect immediately. Occasionally an Act takes effect from an earlier date, usually from a date when the government has announced that it intends to change the law, or to deal with an unintended consequence of an earlier law.

Acts of Parliament are called **primary legislation**. While the authority to tax may only come from primary legislation, details of tax law are often contained elsewhere, such as in statutory instruments or guidance notes. This is called secondary legislation.

Many points of law are clarified by the courts or tribunals.

In addition, HM Revenue and Customs (HMRC) freely gives its opinions on what tax law means. HMRC was formed in 2005 from a merger between Inland Revenue and HM Customs & Excise.

Acts of Parliament

Most taxes have one or more Acts. The main ones are:

Capital gains tax

Taxation of Chargeable Gains Act 1992

Corporation tax

Corporation Tax Act 2009

Corporation Tax Act 2010

Income tax

Income Tax Act 2007

Income Tax (Earnings and Pensions) Act 2003

Income Tax (Trading and Other Income) Act 2005

National insurance

National Insurance Contributions Act 2002

National Insurance Contributions Act 2006

National Insurance Contributions Act 2008
National Insurance Contributions Act 2011
National Insurance Contributions and Statutory
Payments Act 2004
Social Security Contributions and Benefits Act 1992

Petroleum revenue tax

Oil Taxation Act 1975
Oil Taxation Act 1983

Stamp duty

Stamp Act 1891
Stamp Duties Management Act 1891

Inheritance tax

Inheritance Tax Act 1984

Value added tax

Value Added Tax Act 1994

Taxes in general

Capital Allowances Act 2001
Customs and Excise Management Act 1979
Taxes Management Act 1970
Taxation (International and Other Provisions) Act
2010

There are many other Acts that contain provisions relevant to tax, such as Companies Act 2006 and Insolvency Act 1986.

Every year a **Finance Act** is passed. In some years (mainly those with a general election) there are two Finance Acts, one passed before the election and one after. In 2010, we had three Finance Acts — one before the election and two afterwards.

These Finance Acts make changes to the law, including to all the Acts mentioned above and to other Acts. New taxes are sometimes introduced by a Finance Act. Corporation tax and capital gains tax, for example, were both originally introduced in Finance Act 1965. Air passenger duty is still charged under the law introduced in Finance Act 1994.

Until a Finance Act has become law, it is called a Finance Bill. This is usually presented to Parliament by the Chancellor of the Exchequer. It then passes to a committee where amendments are usually made.

Consolidating Acts

Periodically a tax Act of Parliament and the changes in subsequent Finance Acts are brought together in a **consolidation Act**. This does not change the law but simply tidies it all up into a single Act. This then becomes amended by future Finance Acts and the process starts again.

The three income tax Acts mentioned above consolidate provisions of Income and Corporation Taxes Act 1988 and subsequent Finance Acts. A few bits of this 1988 Act remain in force as the government is considering changing the law. Income tax was first permanently reintroduced in 1842, since when its main Acts have been:

- Income Tax Act 1842
- Income Tax Act 1918
- Income Tax Act 1952
- Income and Corporation Taxes Act 1970

Income and Corporation Taxes Act 1988
Income Tax Act 2007, and other Acts.

In 1996, the government launched the **Tax Law Rewrite Project** which changed how tax law is written to make it much clearer and easier to read. For example, here is part of Income Tax Act 2007 s4:

4 Income tax an annual tax

- 4(1) Income tax is charged for a year only if an Act so provides.
- 4(2) A year for which income tax is charged is called a “tax year”.
- 4(3) A tax year begins on 6 April and ends on the following 5 April.

This could hardly be written more clearly.

In contrast, here is some impenetrable prose from Finance Act 1982 s43 (now mercifully repealed):

- (1) Subject to sub-paragraph (2) below, in the case of a payment which exceeds £50,000 and in respect of which tax is chargeable under section 187 of the Act, the following relief shall be allowed by way of deduction from the tax chargeable by virtue of that section, that is to say, there shall be ascertained —
- (a) the amount of tax which would be chargeable apart from this paragraph and paragraph 7 above in respect of the income of the holder or past holder of the office or employment for the chargeable period of which the payment is treated as income, and
- (b) the amount of tax which would be so chargeable if the amount of the payment had been £50,000 exactly,
- and the amount to be deducted shall be one quarter of the difference between the amount ascertained at (a) and the amount ascertained at (b).

This relates to termination payments from employment. In 1986 — four years later — someone actually bothered to read it. They discovered that this section did not say what everyone thought it did. Large amounts of tax had to be refunded.

Separately, there are **Statute Law Reform Acts** that clean up old Acts of Parliament that are no longer needed. For example, in 2008 it was found that the only unrepealed part of Finance Act 1911 was its title. This has now been repealed.

Getting a copy of the Acts

Acts of Parliament can be bought from The Stationery Office and from some specialist bookshops, but are expensive. Finance Act 2018, for example, costs £27.50 for a 187-page paperback. Within a year, it will be amended.

Tax accountants usually buy updated sets of tax Acts from one of two publishers:

- Lexis Nexis, who produce yellow and orange books, or
- CCH Editions, who produce red and green books.

The orange and green books deal mainly with value added tax.

These annual sets cost hundred of pounds. Even though they are printed on thin paper, they still take up about two feet (two-thirds of a metre) of shelf space. At the beginning of 2010, the UK had 11,520 pages of tax law. The UK finally overtook India in having the world's longest tax code. By 2015, it was estimated that tax law had grown to more than 21,000 pages.

Acts are available for free download from the Internet at <http://www.legislation.gov.uk/ukpga>. This gives every Act passed from 1988 (even if now repealed), and Acts before then that are still in force, including Finance Acts back to 1895 (of which s12 remains in force).

The website lists Acts as originally passed, and as amended. Unfortunately tax Acts are not kept up to date very promptly, if at all. So you can see the original Act but not all its changes.

In practice, the ordinary taxpayer is unlikely to need to read the tax law directly but to ask an accountant to do so. Indeed a judge once warned a person not to read too much law:

"If I might add a word to you, it is that I hope that you will not trouble your head further with tax matters, because you seem to have spent a lot of time going through these various Acts, and if you go on spending your time on Finance Acts and the like, it will drive you silly."

Judge Singleton, in *Briggenshaw v Crabb* [1948] 30 TC 33

Scotland and Northern Ireland

Most UK tax law applies to the whole of the United Kingdom. However Scotland and Northern Ireland do have separate legal systems.

For Northern Ireland, Acts for Great Britain are usually re-enacted with similar wording. The tax provisions are usually the same, but the actual Act or regulations may be different.

Northern Ireland has had its own legislative Assembly from 2007, and between 2000 and 2002, and for periods up to 1972. Very few of these are relevant to tax.

Scotland has maintained its own system of law since uniting with England in 1707. Most of these changes relate to procedural matters, such as how debts are collected.

Since 1999, Scotland has its own Parliament able to pass its own Acts within limits. These include some powers in relation to tax.

Wales has an Assembly, but this does not have legislative powers on tax, though this is being considered.

An Act will often state where it applies. Note that Great Britain means England, Wales and Scotland, whereas United Kingdom means Great Britain plus Northern Ireland.

Structure of an Act

An Act has a **name** followed by the year in which it was passed, such as Finance Act 2015. This is called the short title.

Strictly speaking, every Parliamentary session produces one statute of which each Act is a chapter. So Finance Act 2010 is chapter 13.

This is followed by the **long title** which states the purpose of the Act in general terms.

Thereafter the Act is laid out in sections followed by Schedules. The sections are numbered from 1. Corporation Tax Act 2009 has 1,330 sections. For longer Acts, the sections are grouped into Parts. Sometimes these Parts are sub-divided into Chapters.

Sections can be divided into sub-sections indicated by numbers in brackets. Sub-sections may be further divided, first by letters and then by lower case Roman numerals. So, for example reference could be made to:

Income Tax (Earnings and Pensions) Act 2003 s454(5)(a)(i).

This gives a condition for a maintenance payment to qualify for tax relief.

An Act may be **amended** by a later Act inserting new sections. So s199A means a new section inserted after s199 in an existing Act by a later Act.

This can create problems when further sections are added. You could have s199AA. The letter Z is used to mean a section before an A suffix. This can get quite complicated. For example Income and Corporation Taxes Act 1988 has a section 444AECB.

After the sections there may be **Schedules**. There will be a section of the Act that gives legal effect to the Schedule. A Schedule typically gives details of a tax provision that would otherwise clutter up the main body of the Act. It is a form of appendix. However, its provisions are just as binding as those in sections.

A Schedule is divided into consecutively numbered paragraphs, such as Income Tax Act 2007 Sch 2 para 162(1).

European law

The European Union passes law that is directly applicable in the UK.

European Union law broadly takes the form of Treaties and directives. The UK government enacts these treaties into UK law, so there is always an Act of Parliament giving effect to any EU law.

There have been instances where UK law has been found not to comply with EU law. Examples include relief for dividends from foreign branches, and introduction of the VAT three-year cap. In such cases, EU law takes precedence. UK law then has to be amended.

Value added tax is very heavily determined by EU law. Although this is always re-enacted as UK law, there have been many instances where UK law has been found to be ineffective.

The position changes when the UK leaves the European Union on 19 March 2019. Under the European Union (Withdrawal) Bill, all EU law is transferred into UK law where it may be subsequently amended, repealed or retained.

Statutory instruments

The main example of secondary law is the **Statutory Instrument (SI)**.

The Scottish Parliament may issue a **Scottish Statutory Instrument (SSI)**.

These allow ministers (and sometimes other bodies) to give detailed provisions, as allowed by an Act.

For example, Income Tax (Earnings and Pensions) Act 2003 s684 states that the Commissioners of Inland Revenue (now HMRC) must make PAYE regulations to deal with the tax of employee's wages. These regulations are Income Tax (Pay As You Earn) Regulations SI 2003 No 2682. This means that these regulations were the 2,682th statutory instrument issued in 2003. These regulations are the consolidation of earlier regulations. They have also been amended.

A statutory instrument is broken down into regulations, rules or clauses depending on its nature. The provisions on employees' tax codes, for example, is found in SI 2003 No 2682 reg 7(1).

A statutory instrument must be issued within the power of the Act that authorises it, or the SI has no legal effect. This rare event happened in 1987 when regulation 11 of SI 1986 No 482 was struck down by a judge. It related to the taxation of building society dividends.

SIs are also available on the same website as Acts of Parliament.

Extra-statutory concessions

A curiosity of the tax system is that HMRC and its predecessor bodies have seen fit to relax tax law in certain cases. This is done under the general powers of administration of the tax system.

These relaxations are given in **extra-statutory concessions** (ESCs). Their legality has often been questioned, but as their effect is usually to relieve a taxpayer of tax, they have not often been challenged. In 2005, the House of Lords ruled (in *re Wilkinson*) that the tax authorities had exceeded their authority in many extra-statutory concessions. As a consequence, many have now been put into Acts of Parliament.

A further curiosity of ESCs is that HMRC have discretion whether to allow them, which departs from the fundamental principle that all taxpayers must be treated with equal fairness. The tax authorities have disallowed an ESC when it is being used for tax avoidance, so there is little evidence of abuse by HMRC, however unsatisfactory their existence is.

ESCs are listed in **categories**, so A lists all concessions applicable to individuals. A 4 relates to travel expenses of directors, A 10 to lump sums from overseas pensions, and so on. Other ESCs have been repealed or put into an Act. For example, the 15p a day concession for luncheon vouchers that was given by ESC A 2 was enacted as Income Tax (Earnings and Pensions) Act 2003 s89, and has now been repealed.

A current list of concessions can be found at

<https://www.gov.uk/government/collections/extra-statutory-concessions>.

There is also a similar Working Rule Agreement first established in 1981 that provides some tax relief for travelling and subsistence allowances for site-based employees in the construction industry.

Statements of practice

HMRC and its predecessor bodies produced **statement of practices** (SPs) on various technical matters. This gives the tax authority's opinion on the tax treatment. Only a few are issued each year.

Before 17 July 1978, statement of practices were numbered in the same way as extra-statutory concessions. A few of these old SPs are still in force. The oldest is A6 issued in 1973 about VAT on earnings.

Since 1978, Statement of practices are indicated as SP followed by a number and two-digit year indicator. So SP 1/10 means the first (and only) SP of 2010. It relates to HMRC contact centres.

It should be remembered that an SP is just HMRC's opinion, which may not be upheld by a judge. HMRC will always accept a tax return compiled in accordance with an SP, but you may

challenge an SP as not being in accordance with tax law. If you do, make sure of your grounds, and explicitly tell HMRC that you are not following the SP.

There have been successful challenges. In relation to capital gains tax on a disposal by trustees, SP 7/78 was overruled in the case *Roome v Edwards [1981]*. So SP 9/81 was issued as a replacement, only to be overruled in *Bond v Pickford [1983]*. This has now been further replaced by SP 7/84, which may be correct.

Guidance is also given in many **other types of publication** from HMRC and its predecessor bodies. From 1983, it has published Revenue Interpretations (RIs), and a few Revenue Decisions (RDs) of which just two remain effective.

RIs are now published in *Tax Bulletin* issued six times a year. An RI has a lower status than an SP. In particular, HMRC may not follow an interpretation because of the facts of a case. There are now hundreds of RIs.

Since 2007, HMRC has published **HMRC Briefs**. These are intended to clarify the tax consequence in a particular area, particularly after a significant court case. They are issued promptly and intended to be of effect for a year or so.

HMRC also publish:

- Codes of Practice (COPs) on how it will behave;
- Factsheets which seek simply to explain tax law;
- Toolkits to assist taxpayers in completing returns;
- Spotlights dealing with tax avoidance.

There is a significant body of miscellaneous material in the form of press releases and statements.

Between 1990 and 1996, Inland Revenue published its Inspectors' Manuals. Since 2015, these have been called **Tax Manuals** as they are now written for taxpayers as well as tax staff.

This is guidance to its own staff. This was previously regarded as confidential. Some parts are redacted, usually because they relate to specific taxpayers. However these large volumes do contain much useful information. A problem is that they can be many years out of date.

Until 1997, Inland Revenue published Business Economic Notes (BENs) on specific trades, such as fish and chip shops. From 2006, it has published Tactical and Information Packages (TIPs) that serve a similar purpose.

HMRC also publishes hundred of leaflets and other forms of guidance. For VAT, some provisions in notices have the force of law. This is clearly indicated in the leaflet.

Some guidance may be given in Parliamentary answers, and quoted in Hansard. Other material may be agreed with a professional body or a representative body.

All HMRC material is available for free download from the **website** www.hmrc.gov.uk. While the quantity and quality of material is generally very good, the search engine is poor. Many accountants use a better search engine such as Google and look down the results for the HMRC website.

A more detailed blog of tax developments can be accessed from <https://www.gov.uk/government/latest?departments%5B%5D=hm-revenue-customs&page=2>. This gives such further details as new leaflets, updated guidance, internal documents about HMRC, changes to Customs tariff and much more.

HMRC provides **briefings** on matters of tax policy, mainly to politicians. These often contain useful background information on significant developments. They can be downloaded from <https://www.gov.uk/government/collections/briefings>.

Court decisions

A final source of law comes from **tribunals and courts** when they deal with specific disputes that cannot be resolved by the taxpayer and HMRC.

A court case may set a precedent which must then be followed by other courts unless overturned on appeal or distinguished.

Court decisions have been published from the earliest days. These are reported in various series of law reports, as indicated by a citation. This is the convention by which a case may be identified in the reports.

The **name** of a court case usually states:

- the names of the parties;
- the year the decision was given;
- the court where it was heard; and
- the citation where the report may be found.

For example, the issue of whether an employee should be taxed on the direct cost or marginal cost of a benefit in kind was finally resolved by the House of Lords in the case:

Pepper v Hart. [1992] HL. 65 TC 421.

Mr Pepper is the tax inspector who brought the case for Inland Revenue. Sometimes Inland Revenue is identified as IRC or CIR for Commissioners of Inland Revenue.

Mr Hart was the taxpayer. To be precise, he was the first name of nine taxpayers with an identical issue. The case could be cited as *Pepper v Hart and others*.

The decision was given in 1992 by the House of Lords, indicated as HL. The Supreme Court is indicated as SC. The Court of Appeal is indicated as CA. The Queen's Bench Division, Chancery Division and Family Division of the High Court are indicated as QBD, Ch D and Fam respectively. Other courts usually have their names written in full.

The last part indicates that the decision can be found in volume 65 of *Tax Cases* starting at page 421.

Tax Cases is the official publication produced by Inland Revenue and HMRC. Volume 1 starts at 1875. These are published as booklets about six times a year. These can be then rebound as volumes.

However *Tax Cases* is just one series of law reports. The case *Pepper v Hart* can also be cited as any one of:

- [1992] *STC* 898
- [1992] 3 *WLR* 1032
- [1993] 1 *All ER* 42.

STC means Simon's Tax Cases. These are volumes produced from 1973 in distinctive blue covers by Lexis Nexis, previously Butterworths, with one or two volumes for each year. The citation above means that you can read the case from page 898 of the 1982 volume.

WLR and All ER are respectively the Weekly Law Reports and All England Law Reports. These cover all court cases and not just those that relate to tax. For this reason, there are several volumes each year. This case can be found in volume 3 of WLR for 1992 and volume 1 of All ER for 1993.

There are other series of law reports, including BTR for *British Tax Reports* published by CCH Editions. *The Times* newspaper also publishes brief law reports. There are many other series of law reports relating to other branches of the law.

There is now a free website called British and Irish Legal Information Institute or BAILII at www.bailii.org. This gives summaries of cases from courts and tribunals completely free under a neutral citation. So *Pepper v Hart* can be found under neutral citation UKHL 3. The case reports are excellent, the search engine much less so, so it can be easier to use Google first.

Tribunal decisions

Many tax decisions are heard by tribunals rather than courts.

Before 1 April 2009, most direct taxes were heard by Special Commissioners or general commissioners. Since 1995, Special Commissioners's decisions have been made public, usually with the citation SpC and a number and year. The last was number 742 in 2009.

VAT cases were heard by a VAT tribunal from 1973 (when the tax was introduced) until 1 April 2009. They heard 20,983 cases.

There were various other tribunals that heard appeals against taxes or specific provisions.

From 1 April 2009, all these tribunals are replaced by First Tier Tax Tribunals and Upper Tier Tax Tribunals, known as FTT and UKUT.

FTT cases are indicated as TC followed by a number. While UKUT cases are indicated as UKUT followed by a number, sometimes with a letter.

All FTT and predecessor tribunal decisions from April 2003 can be downloaded free from the website www.financeandtaxtribunals.gov.uk. UKUT decisions can be downloaded free from the website www.tribunals.gov.uk/financeandtax.

Tribunal decisions are also widely reported in tax publications and on website, including this one.