

FINANCE ACT 2009

EXPLANATORY NOTES

INTRODUCTION

Section 100 Schedule 52: Recovery of Overpaid Tax Etc

Summary

1. [Section 100](#) and Schedule 52 change the rules regarding claims for repayment of overpaid income tax, capital gains tax (CGT) and corporation tax (CT). The changes will have effect for claims made on or after 1 April 2010 except for certain transitional cases.

Details of the Section

2. [Section 100](#) introduces Schedule 52 which amends the existing error or mistake relief legislation and allows HM Treasury to make transitional and other provisions as appropriate.

Details of the Schedule

3. Part 1 of the Schedule deals with overpayments of income tax and CGT. It replaces sections 33 and 33A of the Taxes Management Act 1970 (TMA) and introduces new Schedule 1AB to TMA which contains the main provisions. Part 1 amends other sections of TMA and Schedule 1A for error or mistake claims.
4. Paragraph 1 of the new Schedule 1AB provides that a person may make a claim for repayment of an amount they have overpaid by way of income tax or CGT or discharge of an amount that has been over-assessed, subject to restrictions. It also provides that the Commissioners for HM Revenue and Customs (HMRC) are not liable to give relief except under this provision or any other provision relating to income tax or CGT.
5. Paragraph 2 of the new Schedule 1AB sets out cases in which the Commissioners will not be liable to give relief:
 - case A is where the alleged overpayment arises from a mistake concerning a claim, election or notice or certain mistakes relating to capital allowances;
 - case B is where relief can be obtained by other means;
 - case C is where the claimant could have obtained relief by other means when they first knew, or ought reasonably to have known of the overpayment;
 - case D is where the grounds of the claim have already been considered by a court or tribunal, or considered by HMRC and settled by agreement between HMRC and the claimant, during the course of an appeal;
 - case E is where the claimant knew or ought reasonably to have known the grounds at a time when claimant could have brought the appeal before the tribunal or a court in due course;

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- case F is where HMRC have taken proceedings to enforce payment of the amount; and
 - cases G and H deal with amounts that were understood to be due under the practice generally prevailing at the time the liability was computed or in the case of PAYE, the practice generally prevailing 12 months after the end of the tax year.
6. Paragraph 3 of the new Schedule 1AB sets a time limit for claims of four years from the period in respect of which the payment or the assessment was made except where the claim arises from a mistake in a return. For mistakes in returns, the time limit runs from the end of the period for which the return was made. Claims are to be made outside a Self Assessment return.
 7. Paragraph 4 of the new Schedule 1AB provides that where A is required to pay tax due from B under any enactment, a claim can only be made by B. If A pays an amount that they were not required to pay under a relevant enactment in respect of B, A may claim repayment but HMRC will not be required to pay an amount that has already been repaid to B.
 8. Paragraph 5 of the new Schedule 1AB provides that a claim in respect of a mistake in a partnership return must be made by a partner nominated by all the relevant partners.
 9. Paragraph 6 of the new Schedule 1AB allows HMRC to make a discovery assessment to recover any related underpayments of income tax, capital gains tax or corporation tax or to make a discovery determination for a related amount where these would otherwise be out of time or barred by section 29(2) of TMA or the CT equivalent. If the assessment or determination depends on these provisions it must be made before the claim is finally determined.
 10. Paragraph 7 of the new Schedule 1AB similarly allows HMRC to make a discovery amendment to a partnership statement to recover any related underpayments of income tax, CGT or CT.
 11. Paragraph 8 of the new Schedule 1AB extends claims to amounts paid under contract settlements. It allows HMRC to set any repayments against amounts payable under discovery assessments or through partnership amendments related to the claim.
 12. Paragraph 5 of the Schedule inserts a new subsection (2B) into section 43A of TMA to provide that a claim is relevant to an amendment or discovery assessment if it relates to the same year of assessment.
 13. Paragraph 7 amends Schedule 1A of TMA to ensure that a claim has no effect if it is provided elsewhere that the amount should not be repaid or discharged.
 14. Paragraph 10 follows the transitional provisions relating to changes to general claims time limits under Schedule 39 to the Finance Act (FA) 2008. It provides that a longer time limit will apply for claims made before 1 April 2012, by persons other than companies, where the claim relates to a mistake in a return and the notice requiring that return was not given within one year of the end of the tax year.
 15. Paragraph 11 provides that section 33 of TMA will continue to apply in its current form for the purposes of petroleum revenue tax.
 16. [Part 2](#) deals with overpayments of CT. It amends paragraph 51 of Schedule 18 to FA 1998 and introduces new paragraphs 51A to G.
 17. New paragraph 51 of Schedule 18 to FA 1998 provides that a person may make a claim for repayment of an amount they have overpaid by way of CT or discharge of an amount that has been over-assessed, subject to restrictions. It also provides that the Commissioners are not liable to give relief except under this provision or any other provision relating to corporation tax.

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18. New paragraph 51A sets out the cases in which the Commissioners will not be liable to give relief:
 - case A is where the alleged overpayment arises from a mistake concerning a claim or election or notice or certain mistakes relating to capital allowances;
 - case B is where the claimant can obtain relief by other means;
 - case C is where the claimant could have obtained relief by another means when they first knew, or ought reasonably to have known of the overpayment;
 - case D is where the grounds of the claim have already been considered by a court or tribunal, or considered by HMRC and settled by agreement between HMRC and the claimant, during the course of an appeal.
 - case E is where the claimant knew or ought reasonably to have known the grounds at a time when the claimant could have brought the appeal before the tribunal or a court in due course;
 - case F is where HMRC have taken proceedings to enforce payment of the amount; and
 - case G deals with amounts that were understood to be due under the practice generally prevailing at the time the liability was computed.
19. New paragraph 51B sets a time limit for claims of four years from end of the accounting period in respect of which the payment or the assessment was made except where the claim relates to a mistake in a return. In that case, the time limit runs from the end of the accounting period for which the return was made. Claims are also to be made outside a company tax return.
20. New paragraph 51C provides that where A is required to pay tax on behalf of B under any enactment, a claim can only be made by B.
21. New paragraph 51D provides that a claim in respect of a mistake in a partnership return must be made by a partner nominated by all the relevant partners.
22. New paragraph 51E allows HMRC to make related discovery assessments or determinations where these would otherwise be out of time or prevented by paragraph 42 of Schedule 18 to FA 1998. If the assessment or determination depends on these provisions it must be made before the claim is finally determined.
23. New paragraph 51F similarly extends the circumstances in which an amendment to a partnership statement can be made.
24. New paragraph 51G extends claims to amounts paid under contract settlements. It allows HMRC to set any repayments against amounts payable under discovery assessments or through partnership amendments that are related to the claim.
25. Paragraph 15 of the Schedule inserts a new sub-paragraph (1A) into paragraph 62 of Schedule 18 to FA 1998 to provide that a claim is relevant to an amendment or discovery assessment if it relates to the same accounting period.
26. Paragraph 16 inserts a new sub-paragraph (8) into paragraph 88 of Schedule 18 to FA 1998 so that a company can make a claim where a mistake in its tax return for one accounting period leads to an additional amount being assessed in a later period.

Background Note

27. Error or mistake relief is intended to provide a final opportunity for taxpayers to reclaim overpaid tax.

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28. However, the current rules only apply to tax overpaid on assessments as a result of a relevant mistake in a return. The claim must be made within time limits. On receiving a claim, HMRC determine what amount is just and reasonable to repay and may take into account any liabilities that have not been assessed.
29. Claims under the new rules will apply to all overpayments of tax, ensuring there is a single route to obtain redress and that, as far as possible, disputes are dealt with through the tribunal.
30. A claim will be possible only if no other statutory steps are available to recover an overpayment when a person first becomes aware, or might reasonably be expected be aware, that they have overpaid.
31. The person must also have used any appeal rights that were available and the claim will have to be made within time limits.
32. The new rules also identify who can make a claim in respect of an overpaid amount. They enable the claimant to determine the amount to be repaid, subject to HMRC's right to enquire into the claim. There are detailed rules on how the amount to be repaid should be determined.
33. HMRC will be able to make an assessment to recover any directly related underpayments, rather than restricting the claim to take account of such liabilities.