

## SCHEDULES

### SCHEDULE 52

#### RECOVERY OF OVERPAID TAX ETC

##### PART 1

#### INCOME TAX AND CAPITAL GAINS TAX

##### *Claims for recovery of overpaid tax etc*

1 In TMA 1970, for sections 33 and 33A substitute—

##### **“33 Recovery of overpaid tax etc**

Schedule 1AB contains provision for and in connection with claims for the recovery of overpaid income tax and capital gains tax.”

2 After Schedule 1AA to that Act insert—

##### “SCHEDULE 1AB

Section 33

#### RECOVERY OF OVERPAID TAX ETC

##### **Claim for relief for overpaid tax etc**

- 1 (1) This paragraph applies where—
  - (a) a person has paid an amount by way of income tax or capital gains tax but the person believes that the tax was not due, or
  - (b) a person has been assessed as liable to pay an amount by way of income tax or capital gains tax, or there has been a determination or direction to that effect, but the person believes that the tax is not due.
- (2) The person may make a claim to the Commissioners for repayment or discharge of the amount.
- (3) Paragraph 2 makes provision about cases in which the Commissioners are not liable to give effect to a claim under this Schedule.
- (4) Paragraphs 3 to 7 (and sections 42 to 43C and Schedule 1A) make further provision about making and giving effect to claims under this Schedule.
- (5) Paragraph 8 makes provision about the application of this Schedule to amounts paid under contract settlements.

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- (6) The Commissioners are not liable to give relief in respect of a case described in sub-paragraph (1)(a) or (b) except as provided—
  - (a) by this Schedule and Schedule 1A (following a claim under this paragraph), or
  - (b) by or under another provision of the Income Tax Acts or an enactment relating to the taxation of capital gains.
- (7) For the purposes of this Schedule an amount paid by one person on behalf of another is treated as paid by the other person.

**Cases in which Commissioners not liable to give effect to claim**

- 2 (1) The Commissioners are not liable to give effect to a claim under this Schedule if or to the extent that the claim falls within a case described in this paragraph (see also paragraph 4(5)).
- (2) Case A is where the amount paid, or liable to be paid, is excessive by reason of—
  - (a) a mistake in a claim, election or notice,
  - (b) a mistake consisting of making or giving, or failing to make or give, a claim, election or notice,
  - (c) a mistake in allocating expenditure to a pool for the purposes of the Capital Allowances Act or a mistake consisting of making, or failing to make, such an allocation, or
  - (d) a mistake in bringing a disposal value into account for the purposes of that Act or a mistake consisting of bringing, or failing to bring, such a value into account.
- (3) Case B is where the claimant is or will be able to seek relief by taking other steps under the Income Tax Acts or an enactment relating to the taxation of capital gains.
- (4) Case C is where the claimant—
  - (a) could have sought relief by taking such steps within a period that has now expired, and
  - (b) knew, or ought reasonably to have known, before the end of that period that such relief was available.
- (5) Case D is where the claim is made on grounds that—
  - (a) have been put to a court or tribunal in the course of an appeal by the claimant relating to the amount paid or liable to be paid, or
  - (b) have been put to Her Majesty’s Revenue and Customs in the course of an appeal by the claimant relating to that amount that is treated as having been determined by a tribunal (by virtue of section 54 (settling of appeals by agreement)).
- (6) Case E is where the claimant knew, or ought reasonably to have known, of the grounds for the claim before the latest of the following—
  - (a) the date on which an appeal by the claimant relating to the amount paid, or liable to be paid, in the course of which the ground could have been put forward (a “relevant appeal”) was

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- determined by a court or tribunal (or is treated as having been so determined),
- (b) the date on which the claimant withdrew a relevant appeal to a court or tribunal, and
  - (c) the end of the period in which the claimant was entitled to make a relevant appeal to a court or tribunal.
- (7) Case F is where the amount in question was paid or is liable to be paid—
- (a) in consequence of proceedings enforcing the payment of that amount brought against the claimant by Her Majesty’s Revenue and Customs, or
  - (b) in accordance with an agreement between the claimant and Her Majesty’s Revenue and Customs settling such proceedings.
- (8) Case G is where—
- (a) the amount paid, or liable to be paid, is excessive by reason of a mistake in calculating the claimant’s liability to income tax or capital gains tax (other than a mistake in a PAYE assessment or PAYE calculation), and
  - (b) liability was calculated in accordance with the practice generally prevailing at the time.
- (9) Case H is where—
- (a) the amount paid, or liable to be paid, is excessive by reason of a mistake in a PAYE assessment or PAYE calculation, and
  - (b) the assessment or calculation was made in accordance with the practice generally prevailing at the end of the period of 12 months following the tax year for which the assessment or calculation was made.
- (10) For the purposes of Cases G and H—
- (a) “PAYE assessment” means an assessment on the claimant made in accordance with section 709 of ITEPA 2003 (assessment in connection with PAYE deductions), and
  - (b) “PAYE calculation” means a calculation of the amount of a deduction or repayment made or to be made under PAYE regulations in respect of tax estimated to be payable by the claimant.

### **Making a claim**

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- (1) A claim under this Schedule may not be made more than 4 years after the end of the relevant tax year.
  - (2) In relation to a claim made in reliance on paragraph 1(1)(a), the relevant tax year is—
    - (a) where the amount paid, or liable to be paid, is excessive by reason of a mistake in a return or returns under section 8, 8A or 12AA of this Act, the tax year to which the return (or, if more than one, the first return) relates, and
    - (b) otherwise, the tax year in respect of which the payment was made.

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- (3) In relation to a claim made in reliance on paragraph 1(1)(b), the relevant tax year is the tax year to which the assessment, determination or direction relates.
- (4) A claim under this Schedule may not be made by being included in a return under section 8, 8A or 12AA of this Act.

**The claimant: one person accountable for amounts payable by another etc**

- 4 (1) Sub-paragraph (2) applies where, under a relevant enactment, a person (“P”) is accountable to the Commissioners for—
  - (a) an amount representing income tax or capital gains tax that is or is estimated to be payable by another person (“T”), or
  - (b) any other amount that, under a relevant enactment, has been or is to be set off against a liability of T.
- (2) A claim under this Schedule in respect of the amount may be made only by T.
- (3) Sub-paragraph (4) applies where—
  - (a) a person (“P”) has paid an amount described in sub-paragraph (1)(a) or (b) in the belief that P was accountable to the Commissioners for the amount under a relevant enactment, but
  - (b) P was not so accountable.
- (4) A claim under this Schedule in respect of the amount may be made only by P.
- (5) The Commissioners are not liable to give effect to a claim under sub-paragraph (4) if or to the extent that the amount has been repaid to T or set against amounts payable to the Commissioners by T.
- (6) “Relevant enactment” means—
  - (a) PAYE regulations,
  - (b) Chapter 3 of Part 3 of the Finance Act 2004 or regulations under that Chapter (construction industry scheme), or
  - (c) any other provision of or made under the Taxes Acts.

**The claimant: partnerships**

- 5 (1) This paragraph applies where—
  - (a) a trade, profession or business is carried on by two or more persons in partnership,
  - (b) an amount is paid, or liable to be paid, by one or more of those persons in accordance with a self-assessment, and
  - (c) the amount is excessive by reason of a mistake in a partnership return.
- (2) A claim under this Schedule in respect of the amount—
  - (a) may be made by the relevant partner nominated to make the claim by all of the relevant partners, and
  - (b) may not be made by any other person.

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(3) In relation to such a claim, references in this Schedule to the claimant are to any of the relevant partners.

(4) “Relevant partner” means—

- (a) a person who was a partner in the partnership at any time during the period in respect of which the partnership return was made, or
- (b) the personal representative of such a person.

#### **Assessment of claimant in connection with claim**

6 (1) This paragraph applies where—

- (a) a claim is made under this Schedule,
- (b) the grounds for giving effect to the claim also provide grounds for a discovery assessment or determination on the claimant in respect of any chargeable period, and
- (c) such an assessment or determination could be made but for a relevant restriction.

(2) “Discovery assessment or determination” means—

- (a) an assessment under section 29(1), or
- (b) a discovery assessment or discovery determination under Schedule 18 to the Finance Act 1998 (company tax return etc).

(3) The following are relevant restrictions—

- (a) the conditions in section 29(3) to (5),
- (b) the restrictions in paragraphs 42 to 45 of Schedule 18 to the Finance Act 1998, and
- (c) the expiry of a time limit for making a discovery assessment or determination.

(4) Where this paragraph applies—

- (a) the relevant restrictions are to be disregarded, and
- (b) the discovery assessment or determination is not out of time if it is made before the final determination of the claim.

#### **Amendment of partnership return etc in connection with claim**

7 (1) This paragraph applies where—

- (a) a claim is made under this Schedule,
- (b) the claimant is one of two or more persons carrying on a trade, profession or business in partnership,
- (c) the grounds for giving effect to the claim also provide grounds for amending, under section 30B(1) (discovery of loss of tax from partnership), a return made by the partnership or any of the partners in respect of any period, and
- (d) such an amendment could be made but for a relevant restriction.

(2) The following are relevant restrictions—

- (a) the conditions in section 30B(4) to (6), and

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- (b) the expiry of a time limit for making an assessment under that section.
- (3) Where this paragraph applies—
  - (a) the relevant conditions are to be disregarded, and
  - (b) the amendment is not out of time if it is made before the final determination of the claim.

### **Contract settlements**

- 8 (1) In paragraph 1(1)(a) the reference to an amount paid by way of income tax or capital gains tax includes an amount paid under a contract settlement in connection with income tax or capital gains tax believed to be due from any person.
- (2) Sub-paragraphs (3) to (6) apply if the person who paid the amount under the contract settlement (“the payer”) and the person from whom the tax was due (“the taxpayer”) are not the same person.
- (3) In relation to a claim under this Schedule in respect of that amount—
  - (a) the references to the claimant in paragraph 2(5) to (7) (Cases D, E and F) have effect as if they included the taxpayer,
  - (b) the references to the claimant in paragraph 2(8) and (10) (Cases G and H) have effect as if they were references to the taxpayer,
  - (c) the references to the claimant in paragraphs 6(1)(b) and 7(1)(b) have effect as if they were references to the taxpayer, and
  - (d) references to tax in Schedule 1A (as it applies to a claim under this Schedule) include such an amount.
- (4) Sub-paragraph (5) applies where the grounds for giving effect to a claim by the payer in respect of the amount also provide grounds for a discovery assessment or determination on the taxpayer in respect of any chargeable period.
- (5) The Commissioners may set any amount repayable to the payer by virtue of the claim against any amount payable by the taxpayer by virtue of the assessment or determination.
- (6) The obligations of the Commissioners and the taxpayer are discharged to the extent of any set-off under sub-paragraph (5).
- (7) In this paragraph—
  - “contract settlement” means an agreement made in connection with any person’s liability to make a payment to the Commissioners under or by virtue of an enactment;
  - “discovery assessment or determination” has the same meaning as in paragraph 6.

### **Interpretation**

- 9 (1) In this Schedule “the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs.

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- (2) For the purposes of this Schedule a claim is not finally determined until it, or the amount to which it relates, can no longer be varied (whether on appeal or otherwise).”

*Consequential amendments*

- 3 TMA 1970 is amended as follows.
- 4 For the heading before section 32 substitute “*Overpaid tax, excessive assessments etc*”.
- 5 (1) Section 43A (further assessments etc) is amended as follows.
- (2) After subsection (2A) insert—
- “(2B) For the purposes of this section and section 43B below, a claim under Schedule 1AB is relevant in relation to an assessment for a year of assessment if it relates to that year of assessment.”
- (3) In subsection (3), for “a claim” substitute “any other claim”.
- 6 (1) In paragraph 1 of Schedule 1A (claims etc not included in returns), in the definition of “partnership claim”, after “46(2)(b) of” insert “, or paragraph 5 of Schedule 1AB to,”.
- 7 (1) Paragraph 4 of that Schedule (giving effect to claims and amendments) is amended as follows.
- (2) In sub-paragraph (1)—
- (a) for “and (4)” substitute “to (5)”, and
- (b) omit “and to any other provision in the Taxes Acts which otherwise provides”.
- (3) In sub-paragraph (2), for “and (4)” substitute “to (5)”.
- (4) Insert at the end—
- “(5) This paragraph has effect subject to any provision in the Taxes Acts that—
- (a) requires or allows effect to be given to a claim by other means, or
- (b) provides that an amount is not to be discharged or repaid.”
- 8 In Schedule 3ZA (date by which payment to be made after amendment or correction of self-assessment), omit paragraph 10 (amendment following claim for error or mistake relief).
- 9 (1) Section 70H of CAA 2001 (lessee: requirement for tax return treating lease as long funding lease) is amended as follows.
- (2) In subsection (2), for “for relief under the error or mistake provisions in respect of” substitute “under the recovery provisions for relief in respect of an amount paid or liable to be paid that is excessive by reason of”.
- (3) In subsection (3)—
- (a) for ““the error or mistake provisions”” substitute ““the recovery provisions””, and
- (b) for “section 33 of” substitute “Schedule 1AB to”.

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*Transitional provision*

- 10 (1) In relation to a relevant claim, paragraph 3(1) of Schedule 1AB to TMA 1970 (inserted by this Part of this Schedule) has effect as if for “more than 4 years after” there were substituted “more than 5 years after the 31st January next following”.
- (2) “Relevant claim” means a claim within paragraph 3(2)(a) of Schedule 1AB to TMA 1970 that—
- (a) is made before 1 April 2012 by a person other than a company, and
  - (b) satisfies sub-paragraph (3).
- (3) A claim satisfies this sub-paragraph if notice requiring the return (or, if more than one, the first return) mentioned in paragraph 3(2)(a) of Schedule 1AB to TMA 1970 was not given within one year of the end of the tax year to which the return relates.

*Saving for petroleum revenue tax*

- 11 The amendments of TMA 1970 made by this Part of this Schedule do not have effect for the purposes of that Act as applied by paragraph 1 of Schedule 2 to OTA 1975 (management and collection of petroleum revenue tax).