

REVENUE SCOTLAND AND TAX POWERS ACT 2014

EXPLANATORY NOTES

THE ACT

Part 6 – Tax Returns, Enquiries and Assessments

Chapter 7 — Relief in Case of Excessive Assessment Or Overpaid Tax

Double assessment

Section 106 – Relief in case of double assessment

145. This section provides that a taxpayer can make a claim to Revenue Scotland for relief if they believe they have been assessed more than once for the same matter.

Overpaid tax etc.

Section 107 – Claim for relief for overpaid tax etc.

146. This section provides that a taxpayer may make a claim to Revenue Scotland for repayment where they have paid tax that they believe was not chargeable. It also provides that, if an assessment or determination is made that a person is chargeable to an amount of tax and they believe the tax is not chargeable, they can make a claim for the tax to be discharged.

Order changing tax basis not approved

Section 108 – Claim for repayment if order changing tax basis not approved

147. This section relates to situations where an order intended to change the tax basis of a devolved tax by means of the provisional affirmative procedure applies for a period but is not subsequently approved by the Scottish Parliament within 28 days of it being laid.
148. When such an order is made, the changes to the tax basis set out in it (which might be changes to tax rates or bands, and in the case of SLfT, changes to the definition of a disposal to landfill, changes to the definition of landfill site activities, or changes to the types of qualifying materials, the disposal of which is taxable) can apply immediately, so taxpayers' liability will change as soon as the order is made. If the proposed changes are not approved by Parliament within 28 days, then the Order falls. This section provides that in such a situation, a taxpayer can make a claim for repayment of the amount of additional tax paid during the period when the Order was in force.
149. Subsection (2) allows a taxpayer to make a claim to Revenue Scotland for the amount of additional tax paid because of the Order that fell, and any related penalty or interest. Subsection (3) sets out which Orders are relevant to this section. Subsection (5) provides

that any claim must be made within two years of the ‘relevant date’ which is defined in subsection (6).

Defence of unjustified enrichment

Section 109 – Defence to certain claims for relief under section 107 or 108

150. This section provides that Revenue Scotland can reject a claim for relief on the basis that paying it would unjustly enrich the person making the claim. This would happen if the taxpayer was not the person who ultimately bore the cost of the tax. For example, for SLfT, while the tax is paid by the landfill site operator it is ultimately borne by those charged for depositing waste at the site.

Section 110 – Unjustified enrichment: further provision

151. This section explains circumstances in which a repayment would constitute unjustified enrichment where the payment of tax was made by someone other than the taxpayer. Loss or damage related to mistaken assumptions about tax made by a taxpayer should be excluded from consideration of whether a taxpayer would be unjustly enriched. The taxpayer may show that a certain amount would be appropriate compensation for the loss or damage resulting from the mistaken assumption and this may be taken into account.

Section 111 – Unjustified enrichment: reimbursement arrangements

152. This section provides that the Scottish Ministers may make regulations (subject to the affirmative procedure) under which certain reimbursement arrangements may count for the purposes of section 109 (and so do not allow Revenue Scotland to defend the claim for repayment on the ground of unjust enrichment). The regulations may also provide for the conditions that such reimbursement arrangements must comply with, and for other reimbursement arrangements to be disregarded for the purpose of section 109 (so that the fact that the person claiming a repayment may be reimbursing others does not stop Revenue Scotland using the unjust enrichment defence). Subsection (2) defines “reimbursement arrangements” as arrangements made by the person claiming under which the repaid tax is passed on to the persons who actually bore the cost of paying the tax in the first place. For example, if a landfill site operator had overpaid tax, having collected that tax from the person who disposed of the waste, then to return an overpayment of tax to the landfill site operator may lead to the operator being unjustly enriched (if the person who disposed of the waste cannot be found to be reimbursed).
153. Subsection (3) sets out the elements of reimbursement arrangements which may be required by the regulations provided for in subsection (1). These arrangements include setting a period for reimbursement to take place, repayment to Revenue Scotland if reimbursement does not take place and requires interest paid by Revenue Scotland on a repayment to be treated in the same way as the repayment, as well as records to be kept and made available to Revenue Scotland on request that show how the arrangements for reimbursement were carried out.

Section 112 – Reimbursement arrangements: penalties

154. This section provides that regulations made under section 111 may make provision for penalties to be imposed where an obligation by virtue of subsection 111(4) is breached. Regulations may set out circumstances in which a penalty is payable, the amounts payable, and other arrangements for penalties, which may be different for different taxes. The regulations may not create criminal offences.

Other defences to claims

Section 113 – Cases in which Revenue Scotland need not give effect to a claim

155. This section provides a list of situations (other than unjust enrichment) in which Revenue Scotland does not need to make a repayment or discharge an assessment or determination. The situations are: where a mistake is made in a claim, or where a claim is made or not made by mistake; where other provisions in the Act provide means of seeking relief; where a claimant could have sought relief under other provisions in the Act but time limits on those provisions have expired; where the same matter has been put to a court or tribunal by the claimant, has been withdrawn from a court or tribunal, or time limits for putting it to a court or tribunal have passed; where the amount paid is the result of enforcement action or agreement between Revenue Scotland and the claimant; and where the amount paid is excessive but was calculated following normal procedures at the time, unless the tax charged was contrary to EU law.

Procedure for making claims

Section 114 – Procedure for making claims etc.

156. This section sets out that schedule 3 applies in relation to claims made under sections 106 to 108.

Section 115 – Time-limit for making claims

157. This section provides that claims for relief from double assessment or overpayment of tax made under section 106 or 107 must be made within five years of the date the tax return was required and must be made separately from any tax return made to Revenue Scotland.

Section 116 – The claimant: partnerships

158. This section provides that, where an overpayment was made on behalf of a partnership, a claim for relief for overpayment can only be made by someone who is nominated to act on behalf of all partners who would have been liable for the tax if it had been correct.

Section 117 – Assessment of claimant in connection with claim

159. This section provides that, where a claim for relief for overpaid tax is made, and the grounds for that claim are also grounds for Revenue Scotland to make an assessment on the claimant in respect of the tax, then Revenue Scotland can disregard certain restrictions on its ability to make an assessment. These include disregarding the expiry of a time limit. It also provides that a claim for relief for overpayment is not finally determined until the amount to which it relates is final (e.g. following the result of a review or appeal).

Contract settlements

Section 118 – Contract settlements

160. This section makes provision for the effect of contract settlements (defined in subsection (8)). The effect of subsection (1) is that an overpayment of tax can still be reclaimed under section 107 or 108 even though it was paid under a contract settlement. Subsections (3) to (7) apply to situations where tax was paid by someone under a contract settlement but that person who was not the person from whom it was due. In this circumstance a claim for relief from overpayment can be made by the person who paid the amount. In such a case, however, the way some of the defences available to Revenue Scotland under section 113 operate is modified, as is section 117. And where such a claim is made, Revenue Scotland can set off any amount repaid to the person who paid against any amount payable by the taxpayer.