



Revenue Scotland and Tax Powers Act 2014

2014 asp 16

PART 6

TAX RETURNS, ENQUIRIES AND ASSESSMENTS

CHAPTER 7

RELIEF IN CASE OF EXCESSIVE ASSESSMENT OR OVERPAID TAX

Double assessment

106 Relief in case of double assessment

A person who believes that tax has been assessed on that person more than once in respect of the same matter may make a claim to Revenue Scotland for relief against any double charge.

Overpaid tax etc.

107 Claim for relief for overpaid tax etc.

- (1) This section applies where—
 - (a) a person has paid an amount by way of tax but believes the tax was not chargeable, or
 - (b) a person has been assessed as chargeable to an amount of tax, or a determination has been made that a person is chargeable to an amount of tax, but the person believes the tax is not chargeable.
- (2) The person may make a claim to Revenue Scotland for the amount to be repaid or discharged.

Status: This is the original version (as it was originally enacted).

- (3) Where this section applies, Revenue Scotland is not liable to give relief, except as provided in this Part or by or under any other provision of this Act.
- (4) For the purposes of this section and sections 109 to 118, an amount paid by one person on behalf of another is treated as paid by the other person.

Order changing tax basis not approved

108 Claim for repayment if order changing tax basis not approved

- (1) This section applies where a relevant order has ceased to have effect by virtue of a relevant provision and—
 - (a) a person has paid an amount by way of tax that would not have been payable but for the order, or
 - (b) a person has been assessed as chargeable to an amount of tax, or a determination has been made that a person is chargeable to an amount of tax, that would not have been chargeable but for the order.
- (2) The person may make a claim to Revenue Scotland—
 - (a) for the amount of tax, and
 - (b) any related penalty or interest,
 to be repaid or discharged to the extent that it was paid, or assessed or determined as chargeable, in consequence of the relevant order.
- (3) A “relevant order” is an order mentioned in column 1, and a “relevant provision”, in relation to such an order, is the provision mentioned in the corresponding entry in column 2, of the following table.

| <i>Relevant orders</i> | <i>Relevant provisions</i> |
|---|------------------------------|
| Under the LBTT(S) Act 2013— | Section 68(4)(b) of that Act |
| (a) a second or subsequent order under section 24(1), | |
| (b) a second or subsequent order under paragraph 3(1) of schedule 19. | |
| Under the LT(S) Act 2014— | Section 41(3)(b) of that Act |
| (a) an order under section 5(5) providing for anything which would otherwise not be a disposal of material by way of landfill to be such a disposal, | |
| (b) an order under section 6(1) which produces the result that a landfill site activity which would otherwise not be prescribed for the purposes of section 6 is so prescribed, | |
| (c) a second or subsequent order under section 13(2) or (5), | |
| (d) an order under section 13(4), | |
| (e) an order under section 14(7) other than one which provides only that an earlier | |

Status: This is the original version (as it was originally enacted).

| <i>Relevant orders</i> | <i>Relevant provisions</i> |
|--|---|
| order under section 14(7) is not to apply to material. | |
| | <p>(4) A penalty or interest is related to an amount of tax to the extent that it—</p> <ul style="list-style-type: none"> (a) is attributable to the amount, and (b) would not have been incurred but for the relevant order. <p>(5) A claim for repayment must be made before the end of the period of 2 years after the relevant date.</p> <p>(6) The relevant date is—</p> <ul style="list-style-type: none"> (a) the filing date, or (b) the date on which the tax return was made, if the return was made after the filing date. <p>(7) For the purposes of this section and sections 109 to 112, 114, 116 and 118, an amount paid by one person on behalf of another is treated as paid by the other person.</p> <p>(8) Expressions used in this section and in the LT(S) Act 2014 have the meanings given in that Act.</p> |

Defence of unjustified enrichment

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

It is a defence to a claim for relief made under section 107 or 108 that repayment or, as the case may be, discharge of the amount would unjustly enrich the claimant.

110 Unjustified enrichment: further provision

- (1) This section applies where—
 - (a) there is an amount paid by way of tax which (apart from section 109) would fall to be repaid or discharged to any person (“the taxpayer”), and
 - (b) the whole or a part of the cost of the payment of that amount to Revenue Scotland has, for practical purposes, been borne by a person other than the taxpayer.
- (2) Where, in a case to which this section applies, loss or damage has been or may be incurred by the taxpayer as a result of mistaken assumptions made in the taxpayer’s case about the operation of any provisions relating to a tax, that loss or damage is to be disregarded, except to the extent of the quantified amount, in the making of any determination—
 - (a) of whether or to what extent the repayment or discharge of an amount to the taxpayer would enrich the taxpayer, or
 - (b) of whether or to what extent any enrichment of the taxpayer would be unjust.
- (3) In subsection (2) “the quantified amount” means the amount (if any) which is shown by the taxpayer to constitute the amount that would appropriately compensate the taxpayer for loss or damage shown by the taxpayer to have resulted, for any business carried on by the taxpayer, from the making of the mistaken assumptions.

Status: This is the original version (as it was originally enacted).

- (4) The reference in subsection (2) to provisions relating to a tax is a reference to any provisions of—
- (a) any enactment, subordinate legislation or EU legislation (whether or not still in force) which relates to that tax or to any matter connected with it, or
 - (b) any notice published by Revenue Scotland under or for the purposes of any such enactment or subordinate legislation.

111 Unjustified enrichment: reimbursement arrangements

- (1) The Scottish Ministers may by regulations make provision for reimbursement arrangements made by any person to be disregarded for the purposes of section 109 except where the arrangements—
- (a) contain such provision as may be required by the regulations, and
 - (b) are supported by such undertakings to comply with the provisions of the arrangements as may be required by the regulations to be given to Revenue Scotland.
- (2) In this section “reimbursement arrangements” means any arrangements for the purposes of a claim under section 107 or 108 which—
- (a) are made by any person for the purpose of securing that the person is not unjustly enriched by the repayment or discharge of any amount in pursuance of the claim, and
 - (b) provide for the reimbursement of persons who have for practical purposes borne the whole or any part of the cost of the original payment of that amount to Revenue Scotland.
- (3) Without prejudice to the generality of subsection (1) above, the provision that may be required by regulations under this section to be contained in reimbursement arrangements includes—
- (a) provision requiring a reimbursement for which the arrangements provide to be made within such period after the repayment to which it relates as may be specified in the regulations,
 - (b) provision for the repayment of amounts to Revenue Scotland where those amounts are not reimbursed in accordance with the arrangements,
 - (c) provision requiring interest paid by Revenue Scotland on any amount repaid by it to be treated in the same way as that amount for the purposes of any requirement under the arrangements to make reimbursement or to repay Revenue Scotland,
 - (d) provision requiring such records relating to the carrying out of the arrangements as may be described in the regulations to be kept and produced to Revenue Scotland, or to a designated officer.
- (4) Regulations under this section may impose obligations on such persons as may be specified in the regulations—
- (a) to make the repayments to Revenue Scotland that they are required to make in pursuance of any provisions contained in any reimbursement arrangements by virtue of subsection (3)(b) or (c),
 - (b) to comply with any requirements contained in any such arrangements by virtue of subsection (3)(d).

- (5) Regulations under this section may make provision for the form and manner in which, and the times at which, undertakings are to be given to Revenue Scotland in accordance with the regulations and any such provision may allow for those matters to be determined by Revenue Scotland in accordance with the regulations.

112 Reimbursement arrangements: penalties

- (1) Regulations under section 111 may make provision for penalties where a person breaches an obligation imposed by virtue of section 111(4).
- (2) The regulations may in particular make provision including provision—
- (a) about the circumstances in which a penalty is payable,
 - (b) about the amounts of penalties,
 - (c) for fixed penalties, daily penalties and penalties calculated by reference to the amount of repayments which the person would have been liable to make to Revenue Scotland if the obligation had been breached,
 - (d) about the procedure for issuing penalties,
 - (e) about appealing penalties,
 - (f) about enforcing penalties.
- (3) But the regulations may not create criminal offences.
- (4) Regulations made by virtue of this section may amend any enactment (including this Act).

Other defences to claims

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

- (1) Revenue Scotland need not give effect to a claim under section 107 if or to the extent that the claim falls within a case described in this section.
- (2) Case A is where the amount of tax paid, or liable to be paid, is excessive because of—
- (a) a mistake in a claim, or
 - (b) a mistake consisting of making, or failing to make, a claim.
- (3) Case B is where the claimant is or will be able to seek relief by taking other steps under this Part of this Act.
- (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 Revenue Scotland in the course of a review or appeal by the claimant relating to that amount that is treated as having been determined by the tribunal by virtue of section 246 (settling matters in question by agreement).

Status: This is the original version (as it was originally enacted).

- (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 a relevant appeal in the course of which the ground could have been put forward was 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,
 - (c) the end of the period in which the claimant was entitled to make a relevant appeal to a court or tribunal.
- (7) In subsection (6) “relevant appeal” means an appeal by the claimant relating to the amount paid or liable to be paid.
- (8) 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 Revenue Scotland, or
 - (b) in accordance with an agreement between the claimant and Revenue Scotland settling such proceedings.
- (9) 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 tax, and
 - (b) liability was calculated in accordance with the practice generally prevailing at the time.
- (10) Case G does not apply where the amount paid, or liable to be paid, is tax which has been charged contrary to EU law.
- (11) For the purposes of subsection (10), an amount of tax is charged contrary to EU law if, in the circumstances in question, the charge to tax is contrary to—
 - (a) the provisions relating to the free movement of goods, persons, services and capital in Titles II and IV of Part 3 of the Treaty on the Functioning of the European Union, or
 - (b) the provisions of any subsequent treaty replacing the provisions mentioned in paragraph (a).

Procedure for making claims

114 Procedure for making claims etc.

Schedule 3 applies in relation to claims under sections 106 to 108.

115 Time-limit for making claims

- (1) A claim under section 106 or 107 must be made within the period of 5 years after the date by which the tax return, to which the payment by way of tax, or the assessment or determination relates, required to be made.
- (2) A claim under section 107 may not be made by being included in a return.

116 The claimant: partnerships

- (1) This section is about the application of sections 107 and 108 in a case where either—
 - (a) (in a case falling within section 107(1)(a) or 108(1)(a)) the person paid the amount in question in the capacity of a responsible partner or representative partner, or
 - (b) (in a case falling within section 107(1)(b) or 108(1)(b)) the assessment was made on, or the determination related to the liability of, the person in such a capacity.
- (2) In such a case, only a relevant person who has been nominated to do so by all of the relevant persons may make a claim under section 107 or 108 in respect of the amount in question.
- (3) The relevant persons are all the persons who would have been liable as responsible partners to pay the amount in question had the payment been due or (in a case falling within section 107(1)(b) or 108(1)(b)) had the assessment or determination been correctly made.

117 Assessment of claimant in connection with claim

- (1) This section applies where—
 - (a) a claim is made under section 107,
 - (b) the grounds for giving effect to the claim also provide grounds for a Revenue Scotland assessment on the claimant in respect of the tax, and
 - (c) such an assessment could be made but for a relevant restriction.
- (2) In a case falling within section 116(1)(a) or (b), the reference to the claimant in subsection (1)(b) of this section includes any relevant person (as defined in section 116(3)).
- (3) The following are relevant restrictions—
 - (a) the restrictions in section 102 (conditions for assessment where return has been delivered),
 - (b) the expiry of a time limit for making a Revenue Scotland assessment.
- (4) Where this section applies—
 - (a) the relevant restrictions are to be disregarded,
 - (b) the Revenue Scotland assessment is not out of time if it is made before the final determination of the claim.
- (5) A claim is not finally determined until it, or the amount to which it relates, can no longer be varied (whether on review, appeal or otherwise).

Contract settlements

118 Contract settlements

- (1) In sections 107(1)(a) and 108(1)(a) the reference to an amount paid by a person by way of tax includes an amount paid by a person under a contract settlement in connection with tax believed to be due.

Status: This is the original version (as it was originally enacted).

- (2) Subsections (3) to (7) 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 section 107 in respect of that amount—
 - (a) the references to the claimant in section 113(5), (6) and (8) (Cases D, E and F) have effect as if they included the taxpayer,
 - (b) the reference to the claimant in section 113(9) (Case G) has effect as if it were a reference to the taxpayer, and
 - (c) the reference to the claimant in section 117(1)(b) has effect as if it were a reference to the taxpayer.
- (4) In relation to a claim under section 107 or 108 in respect of that amount, references to tax in schedule 3 (as it applies to a claim under section 107 or 108) include the amount paid under the contract settlement.
- (5) Subsection (6) applies where the grounds for giving effect to a claim by the payer in respect of the amount also provide grounds for a Revenue Scotland assessment on the taxpayer in respect of the tax.
- (6) Revenue Scotland may set any amount repayable to the payer as a result of the claim against any amount payable by the taxpayer as a result of the assessment.
- (7) The obligations of Revenue Scotland and the taxpayer are discharged to the extent of any set-off under subsection (6).
- (8) “Contract settlement” means an agreement made in connection with any person's liability to make a payment to Revenue Scotland by or under this Act or any other enactment.