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SCHEDULES

[^{F1}SCHEDULE 1AB

Section 33

RECOVERY OF OVERPAID TAX ETC

Textual Amendments

- F1** Sch. 1AB inserted (with effect in accordance with s. 100(2) of the amending Act) by [Finance Act 2009](#) (c. 10), [Sch. 52 para. 2](#) (with [Sch. 52 paras. 10, 11](#))

Modifications etc. (not altering text)

- C1** [Sch. 1AB](#) excluded (14.9.2023) by [The Public Service Pension Schemes \(Rectification of Unlawful Discrimination\) \(Tax\) \(No. 2\) Regulations 2023](#) (S.I. 2023/912), regs. 1(2), **41(2)** (with reg. 1(3))

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.
- (6) The Commissioners are not liable to give relief in respect of a case described in subparagraph (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.

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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 [^{F2}paragraphs 3A and 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 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—

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- (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.
- [Cases G and H do not apply where the amount paid, or liable to be paid, is tax which ^{F3}(9A) has been charged contrary to EU law.
- (9B) For the purposes of sub-paragraph (9A), 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).]

(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.

Textual Amendments

- F2** Words in Sch. 1AB para. 2(1) substituted (with effect in accordance with art. 5 of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2011 \(S.I. 2011/1037\)](#), arts. 1, **2(2)**
- F3** [Sch. 1AB para. 2\(9A\)\(9B\)](#) inserted (with effect in accordance with s. 231(5) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), s. **231(1)**

Making a claim

- 3 (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.
- (3) In relation to a claim made in reliance on paragraph 1(1)(b), the relevant tax year is^{F4}—

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- (a) where the amount liable to be paid is excessive by reason of a mistake in a return or returns under section 8, 8A or 12AA, the tax year to which the return (or, if more than one, the first return) relates, and
- (b) otherwise,] 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.

[Sub-paragraph (1) is subject to paragraph 3A.]

^{F5}(5)

Textual Amendments

- F4** Words in [Sch. 1AB para. 3\(3\)](#) inserted (with effect in accordance with s. 232(4) of the amending Act) by [Finance Act 2013 \(c. 29\)](#), [s. 232\(1\)](#)
- F5** Sch. 1AB para. 3(5) inserted (with effect in accordance with art. 5 of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2011 \(S.I. 2011/1037\)](#), arts. 1, [2\(3\)](#)

^{F6}Determinations under section 28C: special rules

Textual Amendments

- F6** Sch. 1AB para. 3A and cross-heading inserted (with effect in accordance with arts. 4, 5 of the amending S.I.) by [The Enactment of Extra-Statutory Concessions Order 2011 \(S.I. 2011/1037\)](#), arts. 1, [2\(4\)](#)

3A. (1) This paragraph applies where—

- (a) a determination has been made under section 28C of an amount that a person is liable to pay by way of income tax or capital gains tax, but the person believes the tax is not due or, if it has been paid, was not due,
- (b) relief would be available under this Schedule but for the fact that—
 - (i) the claim falls within Case C (see paragraph 2(4)),
 - (ii) the claim falls within Case F(a) (see paragraph 2(7)(a)), or
 - (iii) more than 4 years have elapsed since the end of the relevant tax year (see paragraph 3(1)), and
- (c) if the claim falls within Case F(a), the person was neither present nor legally represented during the enforcement proceedings in question.

(2) A claim under this Schedule for repayment or discharge of the amount may be made, and effect given to it, despite paragraph 2(4), paragraph 2(7)(a) or paragraph 3(1), as the case may be.

(3) But the Commissioners are not liable to give effect to a claim made in reliance on this paragraph unless conditions A, B and C are met.

(4) Condition A is that in the opinion of the Commissioners it would be unconscionable for the Commissioners to seek to recover the amount (or to withhold repayment of it, if it has already been paid).

(5) Condition B is that the person's affairs (as respects matters concerning the Commissioners) are otherwise up to date or arrangements have been put in place, to the satisfaction of the Commissioners, to bring them up to date so far as possible.

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- (6) Condition C is that either—
- (a) the person has not relied on this paragraph on a previous occasion (whether in respect of the same or a different determination or tax), or
 - (b) the person has done so, but in the exceptional circumstances of the case should be allowed to do so again on the present occasion.
- (7) For the purposes of sub-paragraph (6)—
- (a) a person has relied on this paragraph on a previous occasion if the person has made a claim (or a composite set of claims involving one or more determinations, taxes and tax years) in reliance on this paragraph on a previous occasion, and
 - (b) it does not matter whether that claim (or set of claims) succeeded.
- (8) A claim made in reliance on this paragraph must include (in addition to anything required by Schedule 1A) such information and documentation as is reasonably required for the purpose of determining whether conditions A, B and C are met.]

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,

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- (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.
- (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,

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- (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
 - (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.

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Interpretation

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

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Changes and effects yet to be applied to :

- Sch. 1AB para. 3(2)(a) words inserted by [2017 c. 32 Sch. 14 para. 30\(2\)](#)
- Sch. 1AB para. 3(3)(a) words inserted by [2017 c. 32 Sch. 14 para. 30\(3\)](#)
- Sch. 1AB para. 3(4) words inserted by [2017 c. 32 Sch. 14 para. 30\(4\)](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Blanket Amendment words substituted by [2005 c. 4 Sch. 11 para. 5](#)

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 12ABZAA(5)(a) words substituted by [2017 c. 32, Sch. 14 para. 10BA\(3\)\(a\)](#) (as inserted) by [2020 c. 14 s. 104\(4\)](#)
- s. 12ABZAA(5)(b) words substituted by [2017 c. 32, Sch. 14 para. 10BA\(3\)\(b\)](#) (as inserted) by [2020 c. 14 s. 104\(4\)](#)
- s. 7(1BA) words substituted by [2017 c. 32 Sch. 14 para. 2\(3\)](#)
- s. 8(1AB)-(1AD) inserted by [2017 c. 32 Sch. 14 para. 3\(5\)](#)
- s. 8(1HA) inserted by [2017 c. 32 Sch. 14 para. 3\(11\)](#)
- s. 8A(1)(1ZA) substituted for s. 8A(1) by [2017 c. 32 Sch. 14 para. 4\(3\)](#)
- s. 8A(1AB)-(1AD) inserted by [2017 c. 32 Sch. 14 para. 4\(5\)](#)
- s. 8A(1FA) inserted by [2017 c. 32 Sch. 14 para. 4\(9\)](#)
- s. 8A(6)(7) inserted by [2017 c. 32 Sch. 14 para. 4\(12\)](#)
- s. 12B(1)(1A) substituted for s. 12B(1) by [2017 c. 32 Sch. 14 para. 14\(2\)](#)
- s. 12B(2ZA)(2ZB) inserted by [2017 c. 32 Sch. 14 para. 14\(4\)](#)
- s. 12C and cross-heading inserted by [2017 c. 32 s. 60\(2\)](#)
- s. 12AC(1)(aa) inserted by [2017 c. 32 Sch. 14 para. 13\(2\)\(c\)](#)
- s. 12AC(7)(a) words inserted by [2017 c. 32 Sch. 14 para. 13\(3\)\(b\)](#)
- s. 12AC(7)(a) words renumbered as s. 12AC(7)(a) by [2017 c. 32 Sch. 14 para. 13\(3\)\(a\)](#)
- s. 12AC(7)(b) inserted by [2017 c. 32 Sch. 14 para. 13\(3\)\(c\)](#)
- s. 12ABA(5) inserted by [2017 c. 32 Sch. 14 para. 11\(4\)](#)
- s. 28ZA(6)(c) inserted by [2017 c. 32 Sch. 14 para. 15\(b\)](#)
- s. 29(6)(aa) inserted by [2017 c. 32 Sch. 14 para. 20\(3\)](#)
- s. 29(7)(a)(ia) omitted by [2019 c. 1 Sch. 2 para. 25\(6\)](#)
- s. 46B(5)(f) and word inserted by [2009 c. 4 Sch. 1 para. 303](#)
- s. 49E(5A) inserted by [2021 c. 26 Sch. 27 para. 4](#)
- s. 49EA inserted by [2021 c. 26 Sch. 27 para. 5](#)
- s. 49FA inserted by [2021 c. 26 Sch. 27 para. 6](#)
- s. 61(1A) inserted by [2007 c. 15 Sch. 13 para. 33\(3\)](#)
- s. 61(1A) omitted by [2008 c. 9 Sch. 43 para. 1\(3\)](#)
- s. 63(2)(aa) inserted by [2007 asp 3 Sch. 5 para. 9\(2\)](#)
- s. 69(1)(aa) inserted by [2021 c. 26 Sch. 27 para. 7\(a\)](#)
- s. 103ZA(m)-(o) inserted by [2021 c. 26 Sch. 27 para. 8\(b\)](#)
- s. 107A(3)(e) inserted by [2021 c. 26 Sch. 27 para. 9\(3\)\(c\)](#)
- Sch. A1 amendment to earlier affecting provision [2017 c. 32, s. 60](#) by [2018 c. 3 Sch. 6 para. 7\(2\)\(a\)](#)
- Sch. A1 amendment to earlier affecting provision [2017 c. 32, s. 60](#) by [2018 c. 3 Sch. 6 para. 7\(2\)\(b\)](#)

– Sch. A1 inserted by [2017 c. 32 s. 60\(3\)](#)