

SCHEDULES

SCHEDULE 5

INDIRECT TAXES: OVERPAYMENTS ETC

PART I

UNJUST ENRICHMENT

Disregard of business losses

- 2 (1) This paragraph applies where—
- (a) there is an amount paid by way of relevant tax which (apart from an unjust enrichment provision) would fall to be repaid under a relevant repayment provision to any person (“the taxpayer”), and
 - (b) the whole or a part of the cost of the payment of that amount to the Commissioners has, for practical purposes, been borne by a person other than the taxpayer.
- (2) Where, in a case to which this paragraph applies, loss or damage has been or may be incurred by the taxpayer as a result of mistaken assumptions made in his case about the operation of any provisions relating to a relevant tax, that loss or damage shall 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 of an amount to the taxpayer would enrich him; or
 - (b) of whether or to what extent any enrichment of the taxpayer would be unjust.
- (3) In sub-paragraph (2) above “the quantified amount” means the amount (if any) which is shown by the taxpayer to constitute the amount that would appropriately compensate him for loss or damage shown by him to have resulted, for any business carried on by him, from the making of the mistaken assumptions.
- (4) The reference in sub-paragraph (2) above to provisions relating to a relevant tax is a reference to any provisions of—
- (a) any enactment, subordinate legislation or Community 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 the Commissioners under or for the purposes of any such enactment or subordinate legislation.
- (5) This paragraph has effect for the purposes of making any repayment on or after the day on which this Act is passed, even if the claim for that repayment was made before that day.