
Changes to legislation: There are currently no known outstanding effects for the Finance Act 2004, SCHEDULE 40. (See end of Document for details)

SCHEDULES

SCHEDULE 40

Section 299

STAMP DUTY LAND TAX: CLAIMS NOT INCLUDED IN RETURNS

The following is the Schedule inserted after Schedule 11 to the Finance Act 2003 (c. 14)—

“SCHEDULE 11A

Section 82A

STAMP DUTY LAND TAX: CLAIMS NOT INCLUDED IN RETURNS

Introductory

- 1 This Schedule applies to a claim under any provision of this Part other than a claim that is required to be made in, or by amendment to, a return under this Part. References in this Schedule to a claim shall be read accordingly.

Making of claims

- 2 (1) A claim must be made in such form as the Inland Revenue may determine.
- (2) The form of claim must provide for a declaration to the effect that all the particulars given in the form are correctly stated to the best of the claimant's information and belief.
- (3) The form of claim may require—
- (a) a statement of the amount of tax that will be required to be discharged or repaid in order to give effect to the claim;
 - (b) such information as is reasonably required for the purpose of determining whether and, if so, the extent to which the claim is correct;
 - (c) the delivery with the claim of such statements and documents, relating to the information contained in the claim, as are reasonably required for the purpose mentioned in paragraph (b).
- (4) A claim for repayment of tax may not be made unless the claimant has documentary evidence that the tax has been paid.

Duty to keep and preserve records

- 3 (1) A person who may wish to make a claim must—
- (a) keep such records as may be needed to enable him to make a correct and complete claim, and
 - (b) preserve those records in accordance with this paragraph.
- (2) The records must be preserved until the latest of the following times—
- (a) the end of the period of twelve months beginning with day on which the claim was made;

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- (b) where there is an enquiry into the claim, or into an amendment of the claim, the time when the enquiry is completed;
 - (c) where the claim is amended and there is there is no enquiry into the amendment, the time when the Inland Revenue no longer have power to enquire into the amendment.
- (3) The duty under this paragraph to preserve records may be satisfied by the preservation of the information contained in them.
- (4) Where information is so preserved a copy of any document forming part of the records is admissible in evidence in any proceedings before the Commissioners to the same extent as the records themselves.
- (5) A person who fails to comply with this paragraph in relation to a claim that he makes is liable to a penalty not exceeding £3,000, subject to the following exception.
- (6) No penalty is incurred if the Inland Revenue are satisfied that any facts that they reasonably require to be proved, and that would have been proved by the records, are proved by other documentary evidence provided to them.

Amendment of claim by claimant

- 4 (1) The claimant may amend his claim by notice to the Inland Revenue.
- (2) No such amendment may be made—
- (a) more than twelve months after the day on which the claim was made, or
 - (b) if the Inland Revenue give notice under paragraph 7 (notice of enquiry), during the period—
 - (i) beginning with the day on which notice is given, and
 - (ii) ending with the day on which the enquiry under that paragraph is completed.

Correction of claim by Revenue

- 5 (1) The Inland Revenue may by notice to the claimant amend a claim so as to correct obvious errors or omissions in the claim (whether errors of principle, arithmetical mistakes or otherwise).
- (2) No such correction may be made—
- (a) more than nine months after the day on which the claim was made, or
 - (b) if the Inland Revenue give notice under paragraph 7 (notice of enquiry), during the period—
 - (i) beginning with the day on which notice is given, and
 - (ii) ending with the day on which the enquiry under that paragraph is completed.
- (3) A correction under this paragraph is of no effect if, within three months from the date of issue of the notice of correction, the claimant gives notice rejecting the correction.
- (4) Notice under sub-paragraph (3) must be given to the officer of the Board by whom the notice of correction was given.

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Giving effect to claims and amendments

- 6 (1) As soon as practicable after a claim is made, or is amended under paragraph 4 or 5, the Inland Revenue shall give effect to the claim or amendment by discharge or repayment of tax.
- (2) Where the Inland Revenue enquire into a claim or amendment—
- (a) sub-paragraph (1) does not apply until a closure notice is given under paragraph 11 (completion of enquiry), and then it applies subject to paragraph 13 (giving effect to amendments under paragraph 11), but
 - (b) the Inland Revenue may at any time before then give effect to the claim or amendment, on a provisional basis, to such extent as they think fit.

Notice of enquiry

- 7 (1) The Inland Revenue may enquire into a person's claim or amendment of a claim if they give him notice of their intention to do so ("notice of enquiry") before the end of the period of nine months after the day on which the claim or amendment was made.
- (2) A claim or amendment that has been the subject of one notice of enquiry may not be the subject of another.

Notice to produce documents etc for purposes of enquiry

- 8 (1) If the Inland Revenue give a person a notice of enquiry, they may by notice in writing require him—
- (a) to produce to them such documents in his possession or power, and
 - (b) to provide them with such information, in such form,
- as they may reasonably require for the purposes of the enquiry.
- (2) A notice given to a person under this paragraph (which may be given at the same time as the notice of enquiry) must specify the time (which must not be less than 30 days) within which he is to comply with it.
- (3) In complying with a notice under this paragraph copies of documents may be produced instead of originals, but—
- (a) the copies must be photographic or other facsimiles, and
 - (b) the Inland Revenue may by notice require the original to be produced for inspection.

A notice under paragraph (b) must specify the time (which must not be less than 30 days) within which the person is to comply with it.

- (4) The Inland Revenue may take copies of, or make extracts from, any documents produced to them under this paragraph.
- (5) A notice under this paragraph does not oblige a person to produce documents or provide information relating to the conduct of any pending appeal by him.

Appeal against notice to produce documents etc

- 9 (1) An appeal may be brought against a requirement imposed by a notice under paragraph 8 to produce documents or provide information.
- (2) Notice of appeal must be given—

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- (a) in writing,
 - (b) within 30 days after the issue of the notice appealed against,
 - (c) to the officer of the Board by whom that notice was given.
- (3) An appeal under this paragraph shall be heard and determined in the same way as an appeal against an assessment.
- (4) On an appeal under this paragraph the Commissioners—
- (a) shall set aside the notice so far as it requires the production of documents, or the provision of information, that appears to them not reasonably required for the purposes of the enquiry, and
 - (b) shall confirm the notice so far as it requires the production of documents, or the provision of information, that appears to them reasonably required for the purposes of the enquiry.
- (5) A notice that is confirmed by the Commissioners (or so far as it is confirmed) has effect as if the period specified in it for complying was 30 days from the determination of the appeal.
- (6) The decision of the Commissioners on an appeal under this paragraph is final.

Penalty for failure to produce documents etc

- 10 (1) A person who fails to comply with a notice under paragraph 8 (notice to produce documents etc for purposes of enquiry) is liable—
- (a) to a penalty of £50, and
 - (b) if the failure continues after a penalty is imposed under paragraph (a), to a further penalty or penalties not exceeding £30 for each day on which the failure continues.
- (2) No penalty shall be imposed under this paragraph in respect of a failure at any time after the failure has been remedied.

Completion of enquiry

- 11 (1) An enquiry under paragraph 7 is completed when the Inland Revenue by notice (a “closure notice”) inform the purchaser that they have completed their enquiries and state their conclusions.
- (2) A closure notice must either—
- (a) state that in the opinion of the Inland Revenue no amendment of the claim is required, or
 - (b) if in the Inland Revenue’s opinion the claim is insufficient or excessive, amend the claim so as to make good or eliminate the deficiency or excess.
- In the case of an enquiry into an amendment of a claim, paragraph (b) applies only so far as the deficiency or excess is attributable to the amendment.
- (3) A closure notice takes effect when it is issued.

Direction to complete enquiry

- 12 (1) The claimant may apply to the General or Special Commissioners for a direction that the Inland Revenue give a closure notice within a specified period.

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- (2) Any such application shall be heard and determined in the same way as an appeal.
- (3) The Commissioners hearing the application shall give a direction unless they are satisfied that the Inland Revenue have reasonable grounds for not giving a closure notice within a specified period.

Giving effect to amendments under paragraph 11

- 13 (1) Within 30 days after the date of issue of a notice under paragraph 11(2)(b) (closure notice that amends claim), the Inland Revenue shall give effect to the amendment by making such adjustment as may be necessary, whether—
 - (a) by way of assessment on the claimant, or
 - (b) by discharge or repayment of tax.
- (2) An assessment made under sub-paragraph (1) is not out of time if it is made within the time mentioned in that sub-paragraph.

Appeals against amendments under paragraph 11

- 14 (1) An appeal may be brought against a conclusion stated or amendment made by a closure notice.
- (2) Notice of the appeal must be given—
 - (a) in writing,
 - (b) within 30 days after the date on which the closure notice was issued,
 - (c) to the officer of the Board by whom the closure notice was given.
- (3) The notice of appeal must specify the grounds of appeal.
- (4) On the hearing of the appeal the Commissioners may allow the appellant to put forward grounds not specified in the notice, and take them into consideration, if satisfied that the omission was not deliberate or unreasonable.
- (5) Paragraph 37 of Schedule 10 (settling of appeals by agreement) applies in relation to an appeal under this paragraph as it applies in relation to an appeal under paragraph 35 of that Schedule.
- (6) On an appeal against an amendment made by a closure notice, the Commissioners may vary the amendment appealed against whether or not the variation is to the advantage of the appellant.
- (7) Where any such amendment is varied, whether by the Commissioners or by the order of a court, paragraph 13 (giving effect to amendments under paragraph 11) applies (with the necessary modifications) in relation to the variation as it applied in relation to the amendment.

Jurisdiction of Commissioners

- 15 (1) An appeal against a conclusion stated or amendment made by a closure notice is to be made to the Special Commissioners if it relates to a claim made to the Board.
- (2) Subject to—
 - (a) sub-paragraph (1),

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- (b) paragraph 33(4) of Schedule 10 (appeal against decision on claim for relief in case of double assessment), and
 - (c) any right to elect to bring an appeal before the Special Commissioners conferred by regulations under Schedule 17 (General and Special Commissioners, appeals and other proceedings),
- an appeal under any provision of this Schedule is to be made to the General Commissioners.”

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