



Revenue Scotland and Tax Powers Act 2014

2014 asp 16

PART 6

TAX RETURNS, ENQUIRIES AND ASSESSMENTS

VALID FROM 01/04/2015

CHAPTER 1

OVERVIEW

73 Overview

This Part makes provision about the assessment of devolved taxes including—

- (a) taxpayers' duties in relation to tax records,
- (b) the timing of tax returns,
- (c) amendment and correction of tax returns by taxpayers and Revenue Scotland,
- (d) enquiries by Revenue Scotland into taxpayers' self-assessments,
- (e) determination by Revenue Scotland of tax due where no return is made,
- (f) assessment by Revenue Scotland of tax due outwith enquiries where tax losses or other situations are brought about by taxpayers carelessly or deliberately, and
- (g) claims for relief from double assessment and for repayment of tax.

Status: Point in time view as at 07/11/2014. This version of this part contains provisions that are not valid for this point in time.

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CHAPTER 2

TAXPAYER DUTIES TO KEEP AND PRESERVE RECORDS

Duties to keep records

74 Duty to keep and preserve records

- (1) A person who is required to make a tax return in relation to a devolved tax must—
 - (a) keep any records that may be needed to enable the person to make a correct and complete return, and
 - (b) preserve those records in accordance with this section.
- (2) The records mentioned in subsection (1) must be preserved until the end of the later of the relevant day and the date on which—
 - (a) an enquiry into the return is completed, or
 - (b) if there is no enquiry, a designated officer no longer has power to enquire into the return.
- (3) A person who is liable to be registered for tax (a “registrable person”) must—
 - (a) keep any records that may be needed to enable the registrable person to comply with a requirement to notify Revenue Scotland of the person's intention—
 - (i) to carry out taxable activities, or
 - (ii) to cease to carry out taxable activities,
 - (b) make records relating to material at a landfill site or part of a landfill site, and
 - (c) preserve those records in accordance with this section.
- (4) The records mentioned in subsection (3) must be preserved until the end of the relevant day.
- (5) “The relevant day” in relation to records mentioned in subsection (1) means—
 - (a) the fifth anniversary of the day on which the return is made or, if the return is amended, the day notice of the amendment is given under section 83, or
 - (b) any earlier day that may be specified by Revenue Scotland.
- (6) The “relevant day” in relation to records mentioned in subsection (3) means—
 - (a) in the case of records mentioned in subsection (3)(a), the fifth anniversary of the day on which the notice was given,
 - (b) in the case of records mentioned in subsection (3)(b), the fifth anniversary of the day on which the record was made, or
 - (c) in either case, any earlier day that may be specified by Revenue Scotland.
- (7) Different days may be specified for different purposes under subsection (5)(b) or (6)(c).
- (8) The records required to be kept and preserved under subsection (1) include—
 - (a) details of any relevant transaction (including relevant instruments relating to any transaction, in particular, any contract or conveyance, and any supporting maps, plans or similar documents),
 - (b) details of any relevant taxable activity,
 - (c) records of relevant payments, receipts and financial arrangements.

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- (9) The Scottish Ministers may by regulations—
- (a) provide that the records required to be kept and preserved under this section do, or do not, include records specified in the regulations, and
 - (b) specify supporting documents that are required to be kept under this section.
- (10) Regulations under this section may make provision by reference to things specified in a notice published by Revenue Scotland in accordance with the regulations (and not withdrawn by a subsequent notice).
- (11) “Supporting documents” includes accounts, books, deeds, contracts, vouchers and receipts.

Commencement Information

- II** S. 74 in force at 7.11.2014 for specified purposes by S.S.I. 2014/278, art. 2, sch.

VALID FROM 01/04/2015

75 Preservation of information etc.

The duty under section 74 to preserve records may be satisfied—

- (a) by preserving them in any form and by any means, or
- (b) by preserving the information contained in them in any form and by any means, subject to any conditions or exceptions prescribed by the Scottish Ministers by regulations.

VALID FROM 01/04/2015

Penalties for failing to keep and preserve records

76 Penalty for failure to keep and preserve records

- (1) A person (“P”) who fails to comply with section 74 in relation to a devolved tax is liable to a penalty not exceeding £3,000, subject to the following exception.
- (2) No penalty is incurred if Revenue Scotland is satisfied that any facts that it reasonably requires to be proved, and that would have been proved by the records, are proved by other documentary evidence provided to Revenue Scotland.

77 Reasonable excuse for failure to keep and preserve records

- (1) If P satisfies Revenue Scotland or (on appeal) the tribunal that there is a reasonable excuse for a failure to comply with section 74, liability to a penalty under section 76 does not arise in relation to that failure.
- (2) For the purposes of subsection (1)—
 - (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside P's control,

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- (b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure, and
- (c) where P had a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

78 Assessment of penalties under section 76

- (1) Where a person becomes liable to a penalty under section 76, Revenue Scotland must—
 - (a) assess the penalty, and
 - (b) notify the person.
- (2) An assessment of a penalty under section 76 must be made within the period of 12 months beginning with the date on which the person became liable to the penalty.

79 Enforcement of penalties under section 76

- (1) A penalty under section 76 must be paid—
 - (a) before the end of the period of 30 days beginning with the date on which the notification under section 78 was issued,
 - (b) if a notice of review against the penalty is given, before the end of the period of 30 days beginning with the date on which the review is concluded,
 - (c) if, following review, mediation is entered into, before the end of the period of 30 days beginning with the date either Revenue Scotland or the person who gave the notice of review gave notice of withdrawal from mediation, or
 - (d) if a notice of an appeal against the penalty is given, before the end of the period of 30 days beginning with the date on which the appeal is determined or withdrawn.
- (2) A penalty under section 76 is to be treated for enforcement purposes as an assessment to tax.

80 Power to change penalty provisions in sections 76 to 79

- (1) The Scottish Ministers may by regulations make provision (or further provision) about penalties under this Chapter.
- (2) Provision under subsection (1) includes provision—
 - (a) about the circumstances in which a penalty is payable,
 - (b) about the amounts of penalties,
 - (c) about the procedure for issuing penalties,
 - (d) about appealing penalties,
 - (e) about enforcing penalties.
- (3) Regulations under subsection (1) may not create criminal offences.
- (4) Regulations under subsection (1) may modify any enactment (including this Act).
- (5) Regulations under subsection (1) do not apply to a failure which began before the date on which the regulations come into force.

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Duty to keep and preserve records: further provision

81 Further provision: land and buildings transaction tax

- (1) This section applies in relation to land and buildings transaction tax.
- (2) The Scottish Ministers may by regulations make provision for the keeping and preservation of records in relation to land transactions that are not notifiable.
- (3) Regulations under this section may require the buyer in a land transaction which is not notifiable to—
 - (a) keep such records as may be needed to enable the buyer to demonstrate that the transaction is not notifiable, and
 - (b) preserve those records in accordance with the regulations.
- (4) The regulations may apply sections 74 to 79 (with or without modifications) to a buyer mentioned in subsection (3) as those sections apply to a person mentioned in section 74(1).
- (5) Expressions used in this section and in the LBTT(S) Act 2013 have the meanings given in that Act.

Commencement Information

I2 S. 81 in force at 7.11.2014 by S.S.I. 2014/278, art. 2, sch.

VALID FROM 01/04/2015

CHAPTER 3

TAX RETURNS

Filing dates

82 Meaning of “filing date”

In this Act “the filing date” in relation to a tax return is the date by which that return requires to be made by or under any enactment.

Amendment and correction of returns

83 Amendment of return by taxpayer

- (1) A person (the “taxpayer”) who has made a tax return may amend the return by notice to Revenue Scotland.
- (2) An amendment under this section must be made by the end of the period of 12 months beginning with the relevant date (the “amendment period”).
- (3) The relevant date is—

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- (a) the filing date, or
- (b) such other date as the Scottish Ministers may by order prescribe.

(4) This section is subject to sections 87(3) and 93(4).

84 Correction of return by Revenue Scotland

- (1) Revenue Scotland may correct any obvious error or omission in a tax return.
- (2) A correction under this section—
 - (a) is made by notice to the taxpayer, and
 - (b) is regarded as effecting an amendment of the return.
- (3) The reference in subsection (1) to an error includes, for instance, an arithmetical mistake or an error of principle.
- (4) A correction under this section must be made by the end of the period of 12 months beginning with the day on which the return was made.
- (5) A correction under this section has no effect if the taxpayer rejects it by—
 - (a) during the amendment period, amending the return so as to reject the correction, or
 - (b) after that period, giving a notice rejecting the correction.
- (6) A notice under subsection (5)(b) must be given to Revenue Scotland before the end of the period of 3 months beginning with the date of issue of the notice of correction.

CHAPTER 4

REVENUE SCOTLAND ENQUIRIES

VALID FROM 01/04/2015

Notice and scope of enquiry

85 Notice of enquiry

- (1) A designated officer may enquire into a tax return if subsection (2) has been complied with.
- (2) Notice of the intention to make an enquiry must be given—
 - (a) to the person by whom or on whose behalf the return was made (“the relevant person”),
 - (b) before the end of the period of 3 years after the relevant date.
- (3) The relevant date is—
 - (a) the filing date, if the return was made on or before that date, or
 - (b) the date on which the return was made, if the return was made after the filing date.

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- (4) A return that has been the subject of one notice under this section may not be the subject of another, except a notice given in consequence of an amendment of the return under section 83.
- (5) A notice under this section is referred to as a “notice of enquiry”.

86 Scope of enquiry

- (1) An enquiry extends to anything contained in the tax return, or required to be contained in the return, that relates—
 - (a) to the question whether the relevant person is chargeable to the devolved tax to which the return relates, or
 - (b) to the amount of tax chargeable on the relevant person.
- (2) Subsection (3) applies if the notice of enquiry is given as a result of the amendment of a return under section 83 after an enquiry into the return has been completed.
- (3) The enquiry is limited to—
 - (a) matters to which the amendment relates, and
 - (b) matters affected by the amendment.

VALID FROM 01/04/2015

Amendment of return during enquiry

87 Amendment of self-assessment during enquiry to prevent loss of tax

- (1) If, at a time when an enquiry is in progress into a tax return, a designated officer forms the opinion—
 - (a) that the amount stated in the self-assessment contained in the return as the amount of tax payable is insufficient, and
 - (b) that unless the assessment is immediately amended there is likely to be a loss of tax to the Crown,the officer may by notice to the relevant person amend the assessment to make good the deficiency.
- (2) If the enquiry is one that is limited by section 86(2) and (3) to matters arising from an amendment of the return, subsection (1) applies only so far as the deficiency is attributable to the amendment.
- (3) Where a designated officer gives notice under subsection (1), section 83 does not apply.
- (4) The taxpayer must pay any amount, or additional amount, of tax chargeable as a result of an amendment under this section immediately on receipt of notice of the amendment.
- (5) For the purposes of this section and section 88 the period during which an enquiry is in progress is the whole of the period—
 - (a) beginning with the day on which the notice of enquiry is given, and

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- (b) ending with the day on which the enquiry is completed.

Referral during enquiry

VALID FROM 01/04/2015

88 Referral of questions to appropriate tribunal during enquiry

- (1) At any time when an enquiry is in progress into a tax return any question arising in connection with the subject-matter of the return may be referred to the appropriate tribunal for determination.
- (2) Notice of the referral must be given to the appropriate tribunal jointly by the relevant person and a designated officer.
- (3) More than one notice of referral may be given under this section in relation to an enquiry.

VALID FROM 01/04/2015

89 Withdrawal of notice of referral

A designated officer or the relevant person may withdraw a notice of referral under section 88.

VALID FROM 01/04/2015

90 Effect of referral on enquiry

- (1) While proceedings on a referral under section 88 are in progress in relation to an enquiry—
 - (a) no closure notice may be given in relation to the enquiry, and
 - (b) no application may be made for a direction to give a closure notice.
- (2) Proceedings on a referral are “in progress” where—
 - (a) notice of referral has been given and has not been withdrawn, and
 - (b) the question referred has not been finally determined.
- (3) A question referred has been “finally determined” when—
 - (a) it has been determined by the appropriate tribunal, and
 - (b) there is no further possibility of the determination being varied or set aside (disregarding any power to grant permission to appeal out of time).

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VALID FROM 01/04/2015

91 Effect of determination

- (1) A determination under section 88 is binding on the parties to the referral in the same way, and to the same extent, as a decision on a preliminary plea in an appeal.
- (2) The designated officer conducting the enquiry must take the determination into account—
 - (a) in reaching conclusions on the enquiry, and
 - (b) in the formulation of any amendments of the tax return that may be required to give effect to those conclusions.
- (3) The question determined may not be reopened on an appeal, except to the extent that it could be reopened if it had been determined as a preliminary plea in that appeal.

92 “Appropriate tribunal”

- (1) Where the question to be referred under section 88 is of the market value of any land, the appropriate tribunal is the Lands Tribunal for Scotland.
- (2) In any other case a referral under section 88 is to be made to—
 - (a) the First-tier Tribunal,
 - (b) where determined by or under tribunal rules, the Upper Tribunal, or
 - (c) any other court or tribunal specified by the Scottish Ministers by order.
- (3) References to the “appropriate tribunal” in sections 88 and 90 are to be read accordingly.

Commencement Information

I3 S. 92 in force at 7.11.2014 for specified purposes by S.S.I. 2014/278, art. 2, sch.

Completion of enquiry

VALID FROM 01/04/2015

93 Completion of enquiry

- (1) An enquiry under section 85 is completed—
 - (a) when a designated officer informs the relevant person by a notice (a “closure notice”) that the enquiry is complete and states the conclusions reached in the enquiry, or
 - (b) no closure notice having been given, 3 years after the relevant date.
- (2) A closure notice must be given no later than 3 years after the relevant date.
- (3) A closure notice must either—

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- (a) state that in the officer's opinion no amendment of the tax return is required, or
 - (b) make the amendments of the return required to give effect to the officer's conclusions.
- (4) Where a closure notice is given which makes amendments of a return as mentioned in subsection (3)(b), section 83 does not apply.
- (5) A closure notice takes effect when it is issued.
- (6) The taxpayer must pay any amount, or additional amount, of tax chargeable as a result of an amendment made by a closure notice before the end of the period of 30 days beginning with the day on which the notice is given.
- (7) In subsections (1) and (2) “relevant date” has the same meaning as in section 85.

94 Direction to complete enquiry

- (1) The relevant person may apply to the tribunal for a direction that a closure notice is to be given within a specified period.
- (2) The tribunal hearing the application must give a direction unless satisfied that Revenue Scotland has reasonable grounds for not giving a closure notice within that period.
- (3) In this paragraph “the tribunal” means—
- (a) the First-tier Tribunal, or
 - (b) where determined by or under tribunal rules, the Upper Tribunal.

Commencement Information

I4 S. 94 in force at 7.11.2014 for specified purposes by S.S.I. 2014/278, art. 2, sch.

VALID FROM 01/04/2015

CHAPTER 5

REVENUE SCOTLAND DETERMINATIONS

95 Determination of tax chargeable if no return made

- (1) This section applies where—
- (a) Revenue Scotland has reason to believe that a person (“P”) is chargeable to a devolved tax,
 - (b) P has not made a tax return in relation to that liability, and
 - (c) the relevant filing date has passed.
- (2) “The relevant filing date” means the date by which Revenue Scotland believes a return was required to be made.

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- (3) Revenue Scotland may make a determination (a “Revenue Scotland determination”) to the best of its information and belief of the amount of tax to which P is chargeable.
- (4) Notice of the determination must be given to P and must state the date on which it is issued.
- (5) P must pay the tax chargeable as a result of the determination immediately on receipt of notice of the determination.
- (6) No Revenue Scotland determination may be made more than 5 years after the relevant date.
- (7) The relevant date is—
 - (a) the relevant filing date, or
 - (b) such other date as the Scottish Ministers may by order prescribe.

96 Determination to have effect as a self-assessment

- (1) A Revenue Scotland determination has effect for enforcement purposes as if it were a self-assessment made by P.
- (2) In subsection (1) “for enforcement purposes” means for the purposes of Part 10.
- (3) Nothing in this section affects any liability of a person to a penalty for failure to make a tax return.

97 Determination superseded by actual self-assessment

- (1) If, after a Revenue Scotland determination has been made, P makes a tax return with respect to the tax in question, the self-assessment included in that return supersedes the determination.
- (2) Subsection (1) does not apply to a return made—
 - (a) more than 5 years after the power to make the determination first became exercisable, or
 - (b) more than 3 months after the date of the determination,whichever is the later.
- (3) Where—
 - (a) proceedings have been begun for the recovery of any tax charged by a Revenue Scotland determination, and
 - (b) before the proceedings are concluded the determination is superseded by a self-assessment,the proceedings may be continued as if they were proceedings for the recovery of so much of the tax charged by the self-assessment as is due and payable and has not yet been paid.

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CHAPTER 6

REVENUE SCOTLAND ASSESSMENTS

Assessment of loss of tax or of excessive repayment

98 Assessment where loss of tax

- (1) This section applies if a designated officer comes to the view honestly and reasonably that—
- (a) an amount of devolved tax that ought to have been assessed as tax chargeable on a person has not been assessed,
 - (b) an assessment of the tax chargeable on a person is or has become insufficient, or
 - (c) relief has been claimed or given that is or has become excessive.
- (2) The designated officer may make an assessment of the amount, or additional amount, that ought in the officer's opinion to be charged in order to make good to the Crown the loss of tax.

99 Assessment to recover excessive repayment of tax

- (1) If an amount of tax has been, but ought not to have been, repaid to a person that amount may be assessed and recovered as if it were unpaid tax.
- (2) If the repayment was made with interest, the amount assessed and recovered may include the amount of interest that ought not to have been paid.

100 References to “Revenue Scotland assessment”

In this Act “Revenue Scotland assessment” means an assessment under section 98(2) or 99(1), as the case may be.

101 References to the “taxpayer”

In sections 102 to 105 “taxpayer” means—

- (a) in relation to an assessment under section 98, the person chargeable to the tax,
- (b) in relation to an assessment under section 99, the person mentioned in section 99(1).

Conditions for making Revenue Scotland assessments

102 Conditions for making Revenue Scotland assessments

- (1) A Revenue Scotland assessment may be made only where the situation mentioned in section 98(1) or 99(1) was brought about carelessly or deliberately by—

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- (a) the taxpayer,
 - (b) a person acting on the taxpayer's behalf, or
 - (c) a person who was a partner of the taxpayer.
- (2) But no Revenue Scotland assessment may be made if—
- (a) the situation mentioned in section 98(1) or 99(1) is attributable to a mistake in the return as to the basis on which the tax liability ought to have been calculated, and
 - (b) the return was in fact made on the basis prevailing, or in accordance with the practice generally prevailing, at the time it was made.

103 Time limits for Revenue Scotland assessments

- (1) The general rule is that no Revenue Scotland assessment may be made more than 5 years after the relevant date.
- (2) An assessment of a person in any case involving a loss of tax or a situation brought about deliberately by the taxpayer or a related person may be made up to 20 years after the relevant date.
- (3) An assessment under section 99 (assessment to recover excessive repayment of tax) is not out of time if it is made within the period of 12 months beginning with the date on which the repayment in question was made.
- (4) If the taxpayer has died—
 - (a) any assessment on the personal representatives must be made within 3 years after the death, and
 - (b) an assessment is not to be made by virtue of subsection (1) in respect of a relevant date more than 5 years before the death.
- (5) Any objection to the making of an assessment on the ground that the time limit for making it has expired can only be made on a review or appeal against the assessment.
- (6) In this section—
 - “related person”, in relation to the taxpayer, means—
 - (a) a person acting on the taxpayer's behalf, or
 - (b) a person who was the partner of the taxpayer,
 - “relevant date” means—
 - (a) the filing date, or
 - (b) the date on which the return was made, if the return was made after the filing date.

104 Losses brought about carelessly or deliberately

- (1) This section applies for the purposes of sections 102 and 103.
- (2) A loss of tax or a situation is brought about carelessly by a person if the person fails to take reasonable care to avoid bringing about that loss or situation.
- (3) Subsection (4) applies where—
 - (a) information is provided to Revenue Scotland,

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- (b) the person who provided the information, or the person on whose behalf the information was provided, discovers some time later that the information was inaccurate, and
 - (c) that person fails to take reasonable steps to inform Revenue Scotland.
- (4) Any loss of tax or situation brought about by the inaccuracy is to be treated as having been brought about carelessly by that person.
- (5) References to a loss of tax or to a situation brought about deliberately by a person include a loss of tax or situation brought about as a result of a deliberate inaccuracy in a document given to Revenue Scotland by or on behalf of that person.

Notice of assessment and other procedure

105 Assessment procedure

- (1) Notice of a Revenue Scotland assessment must be served on the taxpayer.
- (2) The notice must state—
- (a) the tax due,
 - (b) the date on which the notice is issued,
 - (c) the date by which—
 - (i) the amount, or additional amount, of tax chargeable as a result of the assessment (as mentioned in section 98(2)), or
 - (ii) the amount of tax or interest repaid that ought not to have been (as mentioned in section 99(1)),
 must be paid, and
 - (d) the time within which any review or appeal against the assessment must be requested.
- (3) The—
- (a) amount, or additional amount, of tax chargeable as a result of the assessment (as mentioned in section 98(2)), or
 - (b) amount of tax or interest repaid that ought not to have been (as mentioned in section 99(1)),
- must be paid before the end of the period of 30 days beginning with the date on which the assessment is issued.
- (4) After notice of the assessment has been served on the taxpayer, the assessment may not be altered except in accordance with the express provisions of this Part or of Part 5.
- (5) Where a designated officer has decided to make an assessment to tax, and has taken all other decisions needed for arriving at the amount of the assessment, the officer may entrust to some other designated officer the responsibility for completing the assessment procedure, whether by means involving the use of a computer or otherwise, including responsibility for serving notice of the assessment.

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CHAPTER 7

RELIEF IN CASE OF EXCESSIVE ASSESSMENT OR OVERPAID TAX

VALID FROM 01/04/2015

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.

VALID FROM 01/04/2015

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.
- (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.

VALID FROM 01/04/2015

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

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(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— (a) a second or subsequent order under section 24(1), (b) a second or subsequent order under paragraph 3(1) of schedule 19.	Section 68(4)(b) of that Act
Under the LT(S) Act 2014— (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 order under section 14(7) is not to apply to material.	Section 41(3)(b) of that Act

(4) A penalty or interest is related to an amount of tax to the extent that it—

- (a) is attributable to the amount, and
- (b) would not have been incurred but for the relevant order.

(5) A claim for repayment must be made before the end of the period of 2 years after the relevant date.

(6) The relevant date is—

- (a) the filing date, or

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- (b) the date on which the tax return was made, if the return was made after the filing date.
- (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.
- (8) Expressions used in this section and in the LT(S) Act 2014 have the meanings given in that Act.

Defence of unjustified enrichment

VALID FROM 01/04/2015

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.

VALID FROM 01/04/2015

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.
- (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.

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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.

Commencement Information

I5 S. 111 in force at 7.11.2014 for specified purposes by S.S.I. 2014/278, art. 2, sch.

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VALID FROM 01/04/2015

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).

VALID FROM 01/04/2015

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

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by the tribunal by virtue of section 246 (settling matters in question 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 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.

Commencement Information

I6 S. 114 in force at 7.11.2014 for specified purposes by S.S.I. 2014/278, art. 2, **sch.**

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VALID FROM 01/04/2015

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.

VALID FROM 01/04/2015

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.

VALID FROM 01/04/2015

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),

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- (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).

VALID FROM 01/04/2015

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.
- (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.

Status:

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