



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

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

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- (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.

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—

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- (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).