

SCHEDULE 3

(introduced by section 114)

CLAIMS FOR RELIEF FROM DOUBLE ASSESSMENT AND FOR REPAYMENT

Introduction

- 1 This schedule applies to a claim under section 106, 107 or 108.

Making of claims

- 2 (1) A claim must be made in such form as Revenue Scotland 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 wishes to make a claim must—
- (a) keep such records as may be needed to enable the person 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 3 years beginning with the day on which the claim was made,
 - (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 no enquiry into the amendment, the time when Revenue Scotland no longer has power to enquire into the amendment.
- (3) The Scottish Ministers may by regulations—
- (a) provide that the records required to be kept and preserved under this paragraph include, or do not include, records specified in the regulations, and
 - (b) provide that those records include supporting documents so specified.
- (4) Regulations under this paragraph 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by reference to things specified in a notice published by Revenue Scotland in accordance with the regulations (and not withdrawn by a subsequent notice).

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- (5) “Supporting documents” includes accounts, books, deeds, contracts, vouchers and receipts.

Preservation of information etc.

- 4 The duty under paragraph 3 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 specified by Revenue Scotland.

Penalty for failure to keep and preserve records

- 5 (1) A person (“P”) who fails to comply with paragraph 3 in relation to a claim that the person makes 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 it.

Reasonable excuse for failure to keep and preserve records

- 6 (1) If P satisfies Revenue Scotland or (on appeal) the tribunal that there is a reasonable excuse for a failure to comply with paragraph 3, liability to a penalty under paragraph 5 does not arise in relation to that failure.
- (2) For the purposes of sub-paragraph (1)—
- (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside P’s control,
 - (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.

Assessment of penalties under paragraph 5

- 7 (1) Where a person becomes liable for a penalty under paragraph 5, Revenue Scotland must—
- (a) assess the penalty, and
 - (b) notify the person.
- (2) An assessment of a penalty under paragraph 5 must be made within the period of 12 months beginning with the date on which the person became liable to the penalty.

Enforcement of penalties under paragraph 5

- 8 (1) A penalty under paragraph 5 must be paid—
- (a) before the end of the period of 30 days beginning with the date on which the notification under paragraph 7 was issued,

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- (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 paragraph 5 is to be treated for enforcement purposes as an assessment to tax.

Power to change penalty provisions in paragraphs 5 to 8

- 9 (1) The Scottish Ministers may by regulations make provision (or further provision) about penalties under paragraphs 5 to 8.
- (2) Regulations under sub-paragraph (1) may include 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 sub-paragraph (1) may not create criminal offences.
- (4) Regulations under sub-paragraph (1) may modify any enactment (including this Act).
- (5) Regulations under sub-paragraph (1) do not apply to a failure which began before the date on which the regulations come into force.

Amendment of claim by claimant

- 10 (1) The claimant may amend the claim by notice to Revenue Scotland.
- (2) No such amendment may be made—
- (a) more than 12 months after the day on which the claim was made, or
 - (b) if Revenue Scotland gives notice under paragraph 13 (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 Scotland

- 11 (1) Revenue Scotland 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 9 months after the day on which the claim was made, or
 - (b) if Revenue Scotland gives notice under paragraph 13 (notice of enquiry), during the period—

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- (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 3 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 Revenue Scotland.

Giving effect to claims and amendments

- 12 (1) As soon as practicable after a claim is made, amended or corrected under paragraph 10 or 11, Revenue Scotland must give effect to the claim or amendment by discharge or repayment of tax.
- (2) Where Revenue Scotland enquires into a claim or amendment—
- (a) sub-paragraph (1) does not apply until a closure notice is given under paragraph 14 (completion of enquiry), and then it applies subject to paragraph 16 (giving effect to amendments under paragraph 14), but
 - (b) Revenue Scotland may at any time before then give effect to the claim or amendment, on a provisional basis, to such extent as it thinks fit.

Notice of enquiry

- 13 (1) Revenue Scotland may enquire into a person's claim or amendment of a claim if it gives the claimant notice of its intention to do so (“notice of enquiry”) before the end of the period of 3 years after the day on which the claim was made.
- (2) A claim or amendment that has been the subject of one notice of enquiry may not be the subject of another.

Completion of enquiry

- 14 (1) An enquiry under paragraph 13 is completed—
- (a) when Revenue Scotland by notice (a “closure notice”) informs the claimant that it has completed its enquiries and states its conclusions, or
 - (b) no closure notice having been given, 3 years after the date on which the claim was made.
- (2) A closure notice must be given no later than 3 years after the date on which the claim was made.
- (3) A closure notice must either—
- (a) state that in the opinion of Revenue Scotland no amendment of the claim is required, or
 - (b) if in Revenue Scotland's opinion the claim is insufficient or excessive, amend the claim so as to make good or eliminate the deficiency or excess.
- (4) In the case of an enquiry into an amendment of a claim, sub-paragraph (3)(b) applies only so far as the deficiency or excess is attributable to the amendment.
- (5) A closure notice takes effect when it is issued.

Direction to complete enquiry

- 15 (1) The claimant may apply to the tribunal for a direction that Revenue Scotland gives a closure notice within a specified period.
- (2) Any such application is to be subject to the relevant provisions of tribunal rules.
- (3) The tribunal must give a direction unless satisfied that Revenue Scotland has reasonable grounds for not giving a closure notice within a specified period.

Giving effect to amendments under paragraph 14

- 16 (1) Within 30 days after the date of issue of a notice under paragraph 14(3)(b) (closure notice that amends claim), Revenue Scotland must 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 14

- 17 (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) within 30 days after the date on which the closure notice was issued,
- (b) to the tribunal.
- (3) The notice of appeal must specify the grounds of appeal.
- (4) Part 11 (reviews and appeals) applies in relation to an appeal under this paragraph as it applies in relation to an appeal under that Part.
- (5) On an appeal against an amendment made by a closure notice, the tribunal may vary the amendment appealed against whether or not the variation is to the advantage of the appellant.
- (6) Where any such amendment is varied, whether by the tribunal or by the order of a court, paragraph 16 (giving effect to amendments under paragraph 14) applies (with the necessary modifications) in relation to the variation as it applied in relation to the amendment.