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*Changes to legislation: There are currently no known outstanding effects for the Finance Act 2001, SCHEDULE 8. (See end of Document for details)*

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## SCHEDULES

### SCHEDULE 8

Section 32.

#### AGGREGATES LEVY: REPAYMENTS AND CREDITS

##### *Reimbursement arrangements*

- 1 (1) The Commissioners may by regulations make provision for reimbursement arrangements made by any person to be disregarded for the purposes of section 32(2) of this Act 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 the Commissioners.
- (2) In this paragraph “reimbursement arrangements” means any arrangements for the purposes of a claim to a repayment of aggregates levy which—
- (a) are made by any person for the purpose of securing that he is not unjustly enriched by the repayment 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 the Commissioners.
- (3) Without prejudice to the generality of sub-paragraph (1) above, the provision that may be required by regulations under this paragraph 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 the Commissioners where those amounts are not reimbursed in accordance with the arrangements;
  - (c) provision requiring interest paid by the Commissioners on any amount repaid by them 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 the Commissioners;
  - (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 the Commissioners, or to an officer of theirs.
- (4) Regulations under this paragraph may impose obligations on such persons as may be specified in the regulations—
- (a) to make the repayments to the Commissioners that they are required to make in pursuance of any provisions contained in any reimbursement arrangements by virtue of sub-paragraph (3)(b) or (c) above;
  - (b) to comply with any requirements contained in any such arrangements by virtue of sub-paragraph (3)(d) above.

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- (5) Regulations under this paragraph may make provision for the form and manner in which, and the times at which, undertakings are to be given to the Commissioners in accordance with the regulations; and any such provision may allow for those matters to be determined by the Commissioners in accordance with the regulations.

*Interest payable by the Commissioners*

- 2 (1) Where, due to an error on the part of the Commissioners, a person—
- (a) has paid to them by way of aggregates levy an amount which was not levy due and which they are in consequence liable to repay to him,
  - (b) has failed to claim a repayment of levy to which he was entitled, under tax credit regulations, in respect of any tax credits, or
  - (c) has suffered delay in receiving payment of an amount due to him from them in connection with aggregates levy,
- then, if and to the extent that they would not be liable to do so apart from this paragraph, they shall (subject to the following provisions of this paragraph) pay interest to him on that amount for the applicable period.
- (2) In sub-paragraph (1) above, the reference in paragraph (a) to an amount which the Commissioners are liable to repay in consequence of the making of a payment that was not due is a reference to only so much of that amount as is the subject of a claim that the Commissioners are required to satisfy or have satisfied.
- (3) In that sub-paragraph the amounts referred to in paragraph (c)—
- (a) do not include any amount payable under this paragraph;
  - (b) do not include the amount of any interest for which provision is made by virtue of section 30(3)(f) [<sup>F1</sup>or 30B(6)(d);]
  - [<sup>F2</sup>(ba) do not include the amount of any tax credit to which a person is entitled by virtue of section 30B(1); but]
  - (c) do include any amount due (in respect of an adjustment of overpaid interest) by way of a repayment under—
    - (i) paragraph 11(3) of Schedule 5 to this Act; or
    - (ii) paragraph 6(3) of Schedule 10 to this Act.
- (4) The applicable period, in a case falling within sub-paragraph (1)(a) above, is the period—
- (a) beginning with the date on which the payment is received by the Commissioners; and
  - (b) ending with the date on which they authorise payment of the amount on which the interest is payable.
- (5) The applicable period, in a case falling within sub-paragraph (1)(b) or (c) above, is the period—
- (a) beginning with the date on which, apart from the error, the Commissioners might reasonably have been expected to authorise payment of the amount on which the interest is payable; and
  - (b) ending with the date on which they in fact authorise payment of that amount.
- (6) In determining the applicable period for the purposes of this paragraph there shall be left out of account any period by which the Commissioners' authorisation of the payment of interest is delayed by circumstances beyond their control.

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- (7) The reference in sub-paragraph (6) above to a period by which the Commissioners' authorisation of the payment of interest is delayed by circumstances beyond their control includes, in particular, any period which is referable to—
- (a) any unreasonable delay in the making of any claim for the payment or repayment of the amount on which interest is claimed;
  - (b) any failure by any person to provide the Commissioners—
    - (i) at or before the time of the making of a claim, or
    - (ii) subsequently in response to a request for information by the Commissioners,with all the information required by them to enable the existence and amount of the claimant's entitlement to a payment or repayment to be determined; and
  - (c) the making, as part of or in association with any claim for the payment or repayment of the amount on which interest is claimed, of a claim to anything to which the claimant was not entitled.
- (8) In determining for the purposes of sub-paragraph (7) above whether any period of delay is referable to a failure by any person to provide information in response to a request by the Commissioners, there shall be taken to be so referable, except so far as may be provided for by regulations, any period which—
- (a) begins with the date on which the Commissioners require that person to provide information which they reasonably consider relevant to the matter to be determined; and
  - (b) ends with the earliest date on which it would be reasonable for the Commissioners to conclude—
    - (i) that they have received a complete answer to their request for information;
    - (ii) that they have received all that they need in answer to that request; or
    - (iii) that it is unnecessary for them to be provided with any information in answer to that request.
- (9) The Commissioners shall not be liable to pay interest under this paragraph except on the making of a claim for that purpose.
- (10) A claim under this paragraph must be in writing and must be made not more than [<sup>F3</sup>4 years] after the end of the applicable period to which it relates.
- (11) References in this paragraph—
- (a) to receiving payment of any amount from the Commissioners, or
  - (b) to the authorisation by the Commissioners of the payment of any amount,
- include references to the discharge by way of set-off (whether in accordance with regulations under paragraph 9 or 10 below or otherwise) of the Commissioners' liability to pay that amount.
- (12) Interest under this paragraph shall be payable at the rate applicable under section 197 of the Finance Act 1996 (c. 8).

#### Textual Amendments

- F1** Words in [Sch. 8 para. 2\(3\)\(b\)](#) substituted (26.3.2015) by [Finance Act 2015 \(c. 11\), s. 61\(6\)\(a\)](#)
- F2** [Sch. 8 para. 2\(3\)\(ba\)](#) inserted (26.3.2015) by [Finance Act 2015 \(c. 11\), s. 61\(6\)\(b\)](#)

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**F3** Words in Sch. 8 para. 2(10) substituted (1.4.2010) by [Finance Act 2009 \(c. 10\), s. 99\(2\), Sch. 51 para. 30; S.I. 2010/867, art. 2\(1\)](#) (with [art. 9](#))

*Assessment for excessive repayment*

- 3 (1) Where—
- (a) any amount has been paid at any time to any person by way of a repayment of aggregates levy, and
  - (b) the amount paid exceeded the amount which the Commissioners were liable at that time to repay to that person,
- the Commissioners may, to the best of their judgement, assess the excess paid to that person and notify it to him.
- (2) Where—
- (a) any amount has been paid to any person by way of repayment of levy,
  - (b) the repayment is in respect of a tax credit the entitlement to which arose in a case falling within section 30(1)(e) (bad debts),
  - (c) the whole or any part of the credit is withdrawn on account of the payment of the whole or any part of the debt taken as bad,
  - (d) the amount of the repayment exceeded the amount which the Commissioners would have been liable to repay had the withdrawal taken place before the determination of the amount of the repayment,
- the Commissioners may, to the best of their judgement, assess the excess repaid to that person and notify it to him.
- (3) Where any person is liable to pay any amount to the Commissioners in pursuance of an obligation imposed by virtue of paragraph 1(4)(a) above, the Commissioners may, to the best of their judgement, assess the amount due from that person and notify it to him.
- (4) Subject to sub-paragraph (5) below, where—
- (a) an assessment is made on any person under this paragraph in respect of a repayment of levy made in relation to any accounting period, and
  - (b) the Commissioners have power under Schedule 5 to this Act to make an assessment on that person to an amount of aggregates levy due from that person for that period,
- the assessments may be combined and notified to him as one assessment.
- (5) A notice of a combined assessment under sub-paragraph (4) above must separately identify the amount being assessed in respect of repayments of levy.

*Assessment for overpayments of interest*

- 4 Where—
- (a) any amount has been paid to any person by way of interest under paragraph 2 above, but
  - (b) that person was not entitled to that amount under that paragraph,
- the Commissioners may, to the best of their judgement, assess the amount so paid to which that person was not entitled and notify it to him.

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*Assessments under paragraphs 3 and 4*

- 5
- (1) An assessment under paragraph 3 or 4 above shall not be made more than two years after the time when evidence of facts sufficient in the opinion of the Commissioners to justify the making of the assessment comes to the knowledge of the Commissioners.
  - (2) Where an amount has been assessed and notified to any person under paragraph 3 or 4 above, it shall be recoverable as if it were aggregates levy due from him.
  - (3) Sub-paragraph (2) above does not have effect if, or to the extent that, the assessment in question has been withdrawn or reduced.

*Interest on amounts assessed*

- 6
- (1) Where an assessment is made under paragraph 3 or 4 above, the whole of the amount assessed shall carry interest, for the period specified in sub-paragraph (2) below, as follows—
    - (a) so much of that amount as represents the amount of a tax credit claimed by a person who was not entitled to it shall carry penalty interest; and
    - (b) so much of that amount as does not carry penalty interest under paragraph (a) above shall carry interest at the rate applicable under section 197 of the Finance Act 1996 (c. 8).
  - (2) That period is the period which—
    - (a) begins with the day after that on which the person is notified of the assessment; and
    - (b) ends with the day before that on which payment is made of the amount assessed.
  - (3) Interest under this paragraph shall be paid without any deduction of income tax.
  - (4) Penalty interest under this paragraph shall be compound interest calculated—
    - (a) at the penalty rate; and
    - (b) with monthly rests.
  - (5) For this purpose the penalty rate is the rate found by—
    - (a) taking the rate applicable under section 197 of the Finance Act 1996 for the purposes of sub-paragraph (1)(b) above; and
    - (b) adding 10 percentage points to that rate.
  - (6) Where a person is liable under this paragraph to pay any penalty interest, the Commissioners or, on appeal, an appeal tribunal may reduce the amount payable to such amount (including nil) as they think proper.
  - (7) Subject to sub-paragraph (8) below, where the person concerned satisfies the Commissioners or, on appeal, an appeal tribunal that there is a reasonable excuse for the conduct giving rise to the liability to pay penalty interest, that is a matter which (among other things) may be taken into account under sub-paragraph (6) above.
  - (8) In determining whether there is a reasonable excuse for the purposes of sub-paragraph (7) above, no account shall be taken of any of the following matters, that is to say—
    - (a) the insufficiency of the funds available to any person for paying any aggregates levy due or for paying the amount of the interest;

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- (b) the fact that there has, in the case in question or in that case taken with any other cases, been no or no significant loss of aggregates levy;
  - (c) the fact that the person liable to pay the interest or a person acting on his behalf has acted in good faith.
- (9) In the case of interest reduced by the Commissioners under sub-paragraph (6) above an appeal tribunal, on an appeal relating to the interest, may cancel the whole or any part of the reduction made by the Commissioners.

*Assessments to interest under paragraph 6*

- 7 (1) Where any person is liable to interest under paragraph 6 above the Commissioners may assess the amount due by way of interest and notify it to him accordingly.
- (2) Without prejudice to the power to make assessments under this paragraph for later periods, the interest to which an assessment under this paragraph may relate shall be confined to interest for a period of no more than two years ending with the time when the assessment under this paragraph is made.
- (3) Where an amount has been assessed and notified to any person under this paragraph it shall be recoverable as if it were aggregates levy due from him.
- (4) Sub-paragraph (3) above does not have effect if, or to the extent that, the assessment in question has been withdrawn or reduced.
- (5) Where an assessment is made under this paragraph to an amount of interest under paragraph 6 above—
- (a) the notice of assessment shall specify a date, not later than the date of the notice of assessment, to which the amount of interest which is assessed is calculated; and
  - (b) if the interest continues to accrue after that date, a further assessment or further assessments may be made under this paragraph in respect of the amounts so accruing.
- (6) Where—
- (a) an assessment to interest is made specifying a date for the purposes of sub-paragraph (5)(a) above, and
  - (b) within such period as may for the purposes of this sub-paragraph have been notified by the Commissioners to the person liable for the interest, the amount on which the interest is payable is paid,
- that amount shall be deemed for the purposes of any further liability to interest to have been paid on the specified date.

*Supplementary assessments*

- 8 If it appears to the Commissioners that the amount which ought to have been assessed in an assessment under paragraph 3, 4 or 7 above exceeds the amount which was so assessed, then—
- (a) under the same paragraph as that assessment was made, and
  - (b) on or before the last day on which that assessment could have been made,
- the Commissioners may make a supplementary assessment of the amount of the excess and notify the person concerned accordingly.

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*Set-off of or against amounts due under this Part of this Act*

- 9 (1) The Commissioners may by regulations make provision in relation to any case where—
- (a) a person is under a duty to pay to the Commissioners at any time an amount or amounts in respect of aggregates levy; and
  - (b) the Commissioners are under a duty to pay to that person at the same time an amount or amounts in respect of that levy or any of the other taxes under their care and management.
- (2) Regulations under this paragraph may provide that if the total of the amount or amounts mentioned in sub-paragraph (1)(a) above exceeds the total of the amount or amounts mentioned in sub-paragraph (1)(b) above, the latter shall be set off against the former.
- (3) Regulations under this paragraph may provide that if the total of the amount or amounts mentioned in sub-paragraph (1)(b) above exceeds the total of the amount or amounts mentioned in sub-paragraph (1)(a) above, the Commissioners may set off the latter in paying the former.
- (4) Regulations under this paragraph may provide that if the total of the amount or amounts mentioned in sub-paragraph (1)(a) above is the same as the total of the amount or amounts mentioned in sub-paragraph (1)(b) above no payment need be made in respect of the former or the latter.
- (5) Regulations under this paragraph may provide for any limitation on the time within which the Commissioners are entitled to take steps for recovering any amount due to them in respect of aggregates levy to be disregarded, in such cases as may be described in the regulations, in determining whether any person is under such a duty to pay as is mentioned in sub-paragraph (1)(a) above.
- (6) Regulations under this paragraph may include provision treating any duty to pay mentioned in sub-paragraph (1) above as discharged accordingly.
- (7) References in sub-paragraph (1) above to an amount in respect of a particular tax include references not only to an amount of tax itself but also to other amounts such as interest and penalties that are or may be recovered as if they were amounts of tax.
- (8) In this paragraph “tax” includes levy or duty.

*Set-off of or against other taxes and duties*

- 10 (1) The Commissioners may by regulations make provision in relation to any case where—
- (a) a person is under a duty to pay to the Commissioners at any time an amount or amounts in respect of any tax (or taxes) under their care and management other than aggregates levy; and
  - (b) the Commissioners are under a duty, at the same time, to make any repayment of aggregates levy to that person or to make any other payment to him of any amount or amounts in respect of aggregates levy.
- (2) Regulations under this paragraph may provide that if the total of the amount or amounts mentioned in sub-paragraph (1)(a) above exceeds the total of the amount or amounts mentioned in sub-paragraph (1)(b) above, the latter shall be set off against the former.

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- (3) Regulations under this paragraph may provide that if the total of the amount or amounts mentioned in sub-paragraph (1)(b) above exceeds the total of the amount or amounts mentioned in sub-paragraph (1)(a) above, the Commissioners may set off the latter in paying the former.
- (4) Regulations under this paragraph may provide that if the total of the amount or amounts mentioned in sub-paragraph (1)(a) above is the same as the total of the amount or amounts mentioned in sub-paragraph (1)(b) above no payment need be made in respect of the former or the latter.
- (5) Regulations under this paragraph may provide for any limitation on the time within which the Commissioners are entitled to take steps for recovering any amount due to them in respect of any of the taxes under their care and management to be disregarded, in such cases as may be described in the regulations, in determining whether any person is under such a duty to pay as is mentioned in sub-paragraph (1) (a) above.
- (6) Regulations under this paragraph may include provision treating any duty to pay mentioned in sub-paragraph (1) above as discharged accordingly.
- (7) References in sub-paragraph (1) above to an amount in respect of a particular tax include references not only to an amount of tax itself but also to other amounts such as interest and penalties that are or may be recovered as if they were amounts of tax.
- (8) In this paragraph “tax” includes levy or duty.

*Restriction on powers to provide for set-off*

- 11 (1) Regulations made under paragraph 9 or 10 above shall not require any such amount or amounts as are mentioned in sub-paragraph (1)(b) of that paragraph (“the credit”) to be set against any such amount or amounts as are mentioned in sub-paragraph (1) (a) of that paragraph (“the debit”) in any case where—
  - (a) an insolvency procedure has been applied to the person entitled to the credit;
  - (b) the credit became due after that procedure was so applied; and
  - (c) the liability to pay the debit either arose before that procedure was so applied or (having arisen afterwards) relates to, or to matters occurring in the course of, the carrying on of any business at times before the procedure was so applied.
- (2) For the purposes of this paragraph, an insolvency procedure is applied to a person if—
  - (a) a bankruptcy order, winding-up order or administration order is made [<sup>F4</sup>or an administrator is appointed] in relation to that person or an award of sequestration is made on that person’s estate;
  - (b) that person is put into administrative receivership;
  - (c) that person passes a resolution for voluntary winding up;
  - (d) any voluntary arrangement approved in accordance with—
    - (i) Part 1 or 8 of the Insolvency Act 1986 (c. 45), or
    - (ii) Part II or Chapter II of Part VIII of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)),
 comes into force in relation to that person;
  - (e) a deed of arrangement registered in accordance with—



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- <sup>F5</sup>(i) . . . . .
- (ii) Chapter I of Part VIII of that Order,  
 takes effect in relation to that person;
- (f) <sup>F6</sup> . . . . .
- (g) . . . . .
- (h) . . . . .
- (i) that person’s estate becomes vested in any other person as that person’s trustee under a trust deed (within the meaning of the Bankruptcy (Scotland) Act [<sup>F7</sup>2016]).
- (3) In this paragraph references, in relation to any person, to the application of an insolvency procedure to that person shall not include—
- (a) the making of a bankruptcy order, winding-up order<sup>F8</sup>... or award of sequestration [<sup>F9</sup>or the appointment of an administrator] at a time when any such arrangement or deed as is mentioned in paragraph (d), (e) or (i) of subparagraph (2) above is in force in relation to that person;
- (b) the making of a winding-up order at any of the following times, that is to say—
- [<sup>F10</sup>(i) immediately upon the appointment of an administrator in respect of the person ceasing to have effect;]
- (ii) when that person is being wound up voluntarily;
- (iii) when that person is in administrative receivership;
- or
- (c) the making of an administration order in relation to that person at any time when that person is in administrative receivership.
- (4) For the purposes of this paragraph a person shall be regarded as being in administrative receivership throughout any continuous period for which (disregarding any temporary vacancy in the office of receiver) there is an administrative receiver of that person.
- (5) In this paragraph—
- “administration order” means an administration order under [<sup>F11</sup>Schedule B1 to] the Insolvency Act 1986 (c. 45) or Article 21 of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)) ;
- “administrative receiver” means an administrative receiver within the meaning of section 251 of that Act of 1986 or Article 5(1) of that Order of 1989.

#### Textual Amendments

- F4** Words in Sch. 8 para. 11(2)(a) inserted (15.9.2003) by [The Enterprise Act 2002 \(Insolvency\) Order 2003 \(S.I. 2003/2096\)](#), [art. 1\(1\)](#), [Sch. para. 37\(a\)](#) (with [art. 6](#))
- F5** Sch. 8 para. 11(2)(e)(i) omitted (1.10.2015) by virtue of [Deregulation Act 2015 \(c. 20\)](#), s. 115(7), [Sch. 6 para. 2\(15\)\(b\)](#) (with [Sch. 6 para. 3](#)); [S.I. 2015/1732](#), [art. 2\(e\)\(i\)](#)
- F6** Sch. 8 para. 11(2)(f)(g)(h) repealed (*retrospective* to 1.4.2002) by [2002 c. 23](#), ss. 132(3), 141, [Sch. 38 para. 10](#), [Sch. 40 Pt. 4\(3\)](#)
- F7** Word in Sch. 8 para. 11(2)(i) substituted (30.11.2016) by [The Bankruptcy \(Scotland\) Act 2016 \(Consequential Provisions and Modifications\) Order 2016 \(S.I. 2016/1034\)](#), [art. 1](#), [Sch. 1 para. 24\(4\)\(a\)](#)

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- F8** Words in Sch. 8 para. 11(3)(a) omitted (15.9.2003) by virtue of [The Enterprise Act 2002 \(Insolvency\) Order 2003 \(S.I. 2003/2096\)](#), art. 1(1), **Sch. para. 37(b)(i)** (with art. 6)
- F9** Words in Sch. 8 para. 11(3)(a) inserted (15.9.2003) by [The Enterprise Act 2002 \(Insolvency\) Order 2003 \(S.I. 2003/2096\)](#), art. 1(1), **Sch. para. 37(b)(ii)** (with art. 6)
- F10** Sch. 8 para. 11(3)(b)(i) substituted (15.9.2003) by [The Enterprise Act 2002 \(Insolvency\) Order 2003 \(S.I. 2003/2096\)](#), art. 1(1), **Sch. para. 37(c)** (with art. 6)
- F11** Words in Sch. 8 para. 11(5) substituted (15.9.2003) by [The Enterprise Act 2002 \(Insolvency\) Order 2003 \(S.I. 2003/2096\)](#), art. 1(1), **Sch. para. 37(d)** (with art. 6)

### *Supplemental provisions of Schedule*

- 12 (1) Any notification of an assessment under any provision of this Schedule to a person's representative shall be treated for the purposes of this Part of this Act as notification to the person in relation to whom the representative acts.
- (2) In this paragraph "representative", in relation to any person, means—
- (a) any of that person's personal representatives;
  - (b) that person's trustee in bankruptcy or liquidator;
  - (c) any person holding office as a receiver in relation to that person or any of his property;
  - (d) that person's tax representative or any other person for the time being acting in a representative capacity in relation to that person.
- (3) In this paragraph "trustee in bankruptcy" includes, as respects Scotland—
- (a) [<sup>F12</sup>a trustee or interim trustee in the sequestration, under the Bankruptcy (Scotland) Act 2016, of a person's estate;] and
  - (b) a trustee acting under a trust deed (within the meaning of that Act).
- (4) The powers conferred by paragraphs 9 and 10 of this Schedule are without prejudice to any power of the Commissioners to provide by tax credit regulations for any amount to be set against another.

### **Textual Amendments**

- F12** Words in Sch. 8 para. 12(3)(a) substituted (30.11.2016) by [The Bankruptcy \(Scotland\) Act 2016 \(Consequential Provisions and Modifications\) Order 2016 \(S.I. 2016/1034\)](#), art. 1, **Sch. 1 para. 24(4)(b)**

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