Changes to legislation: *Finance Act 2003, Part 6 is up to date with all changes known to be in force on or before 23 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

SCHEDULES

SCHEDULE 10

STAMP DUTY LAND TAX: RETURNS, ENQUIRIES, ASSESSMENTS AND APPEALS

Modifications etc. (not altering text)

C1 Sch. 10 applied (with modifications) (with effect in accordance with Sch. 61 para. 29(2)(a) of the amending Act) by Finance Act 2009 (c. 10), **Sch. 61 para. 7(9)**

PART 6

RELIEF IN CASE OF [F1OVERPAID TAX OR] EXCESSIVE ASSESSMENT

Textual Amendments

F1 Words in Sch. 10 Pt. 6 heading inserted (with effect in accordance with s. 28(2) of the amending Act) by Finance (No. 3) Act 2010 (c. 33), **Sch. 12 para. 4(2)**

Relief in case of double assessment

33 (1) A person who believes he has been assessed to tax more than once in respect of the same matter may make a claim [F2to the Inland Revenue for relief against any double charge] .

F3(2) . . . . . .

F3(3) . . . . . .

[F4(4) An appeal may be made against a decision on a claim for relief under this paragraph.]

Textual Amendments

F2 Words in Sch. 10 para. 33(1) substituted (22.7.2004) by Finance Act 2004 (c. 12), **s. 299(7)(a)**

F3 Sch. 10 para. 33(2)(3) repealed (22.7.2004) by Finance Act 2004 (c. 12), s. 299(7)(b), **Sch. 42 Pt. 4(2)**

F4 Sch. 10 para. 33(4) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 383**

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[F5 Claim for relief for overpaid tax etc

Textual Amendments

F5 Sch. 10 paras. 34-34E substituted for Sch. 10 para. 34 (with effect in accordance with s. 28(2) of the amending Act) by Finance (No. 3) Act 2010 (c. 33), **Sch. 12 para. 2**

34 (1) This paragraph applies where—

(a) a person has paid an amount by way of tax but believes that the tax was not due, or

(b) a person has been assessed as liable to pay an amount by way of tax, or there has been a determination to that effect, but the person believes that the tax is not due.

(2) The person may make a claim to the Commissioners for Her Majesty's Revenue and Customs for repayment or discharge of the amount.

(3) Paragraph 34A makes provision about cases in which the Commissioners for Her Majesty's Revenue and Customs are not liable to give effect to a claim under this paragraph.

(4) The following make further provision about making and giving effect to claims under this paragraph—

(a) paragraphs 34B to 34D, and

(b) Schedule 11A.

(5) Paragraph 34E makes provision about the application of this paragraph and paragraphs 34A to 34D to amounts paid under contract settlements.

(6) The Commissioners for Her Majesty's Revenue and Customs are not liable to give relief in respect of a case described in sub-paragraph (1)(a) or (b) except as provided—

(a) by this Schedule and Schedule 11A (following a claim under this paragraph), or

(b) by or under another provision of this Part of this Act.

(7) For the purposes of this paragraph and paragraphs 34A to 34E, an amount paid by one person on behalf of another is treated as paid by the other person.**]**

[F5 Cases in which Commissioners not liable to give effect to a claim

34A (1) The Commissioners for Her Majesty's Revenue and Customs are not liable to give effect to a claim under paragraph 34 if or to the extent that the claim falls within a case described in this paragraph.

(2) Case A is where the amount paid, or liable to be paid, is excessive by reason of—

(a) a mistake in a claim or election, or

(b) a mistake consisting of making or giving, or failing to make or give, a claim or election.

(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—

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(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 Her Majesty's Revenue and Customs in the course of an appeal by the claimant relating to that amount that is treated as having been determined by a tribunal (by virtue of paragraph 37 (settling of appeals 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 an appeal by the claimant relating to the amount paid, or liable to be paid, in the course of which the ground could have been put forward (a "relevant appeal") 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, and

(c) the end of the period in which the claimant was entitled to make a relevant appeal to a court or tribunal.

(7) 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 Her Majesty's Revenue and Customs, or

(b) in accordance with an agreement between the claimant and Her Majesty's Revenue and Customs settling such proceedings.

(8) 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.

[F6(9) Case G does not apply where the amount paid, or liable to be paid, is tax which has been charged contrary to EU law.

(10) For the purposes of sub-paragraph (9), 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).**]**

Textual Amendments

F6 Sch. 10 para. 34A(9)(10) inserted (with effect in accordance with s. 231(5) of the amending Act) by Finance Act 2013 (c. 29), **s. 231(4)**

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Making a claim

34B (1) A claim under paragraph 34 may not be made more than 4 years after the effective date of the transaction.

(2) A claim under paragraph 34 may not be made by being included in a land transaction return.

The claimant: partnerships

34C (1) This paragraph applies where an amount is paid, or is liable to be paid, in respect of a land transaction entered into as purchaser by or on behalf of the members of a partnership (within the meaning of Schedule 15).

(2) Paragraphs 6 and 8 of Schedule 15 do not apply to a claim under paragraph 34 in respect of the amount.

(3) A claim under paragraph 34 in respect of the amount—
- (a) may be made by a relevant person who has been nominated to make the claim by all of the relevant persons, and
- (b) may not be made by any other person.

(4) In relation to such a claim, references in paragraph 34A to the claimant are to any of the relevant persons.

(5) The relevant persons are—
- (a) any person who was a partner in the partnership at the effective date of the transaction, and
- (b) the personal representative of such a person.

Assessment of claimant in connection with claim

34D (1) This paragraph applies where—
- (a) a claim is made under paragraph 34,
- (b) the grounds for giving effect to the claim also provide grounds for a discovery assessment on the claimant in respect of any land transaction, and
- (c) such an assessment could be made but for a relevant restriction.

(2) The reference to the claimant in subsection (1)(b) includes—
- (a) in relation to a claim for an amount paid or liable to be paid in respect of a land transaction entered into as purchaser by or on behalf of the members of a partnership (within the meaning of Schedule 15), a responsible partner within the meaning of paragraph 6(2) of Schedule 15;
- (b) in relation to a claim for an amount paid or liable to be paid in respect of a land transaction entered into by trustees of a settlement (within the meaning of Schedule 16), a responsible trustee within the meaning of paragraph 5(3) of Schedule 16.

(3) The following are relevant restrictions—
- (a) the restrictions in paragraph 30, and
- (b) the expiry of a time limit for making a discovery assessment.

(4) Where this paragraph applies—
- (a) the relevant restrictions are to be disregarded, and

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(b) the discovery 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 appeal or otherwise).

Contract settlements

34E (1) In paragraph 34(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) Sub-paragraphs (3) to (6) 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 paragraph 34 in respect of that amount—

(a) the references to the claimant in paragraph 34A(5) to (7) (Cases D, E and F) have effect as if they included the taxpayer,

(b) the reference to the claimant in paragraph 34A(8) (Case G) has effect as if it were a reference to the taxpayer,

(c) the reference to the claimant in paragraph 34D(1)(b) has effect as if it were a reference to the taxpayer, and

(d) references to tax in Schedule 11A (as it applies to a claim under paragraph 34) include such an amount.

(4) Sub-paragraph (5) applies where the grounds for giving effect to a claim by the payer in respect of the amount also provide grounds for a discovery assessment on the taxpayer in respect of any land transaction.

(5) The Commissioners for Her Majesty's Revenue and Customs may set any amount repayable to the payer by virtue of the claim against any amount payable by the taxpayer by virtue of the assessment.

(6) The obligations of the Commissioners for Her Majesty's Revenue and Customs and the taxpayer are discharged to the extent of any set-off under sub-paragraph (5).

(7) "Contract settlement" means an agreement made in connection with any person's liability to make a payment to the Commissioners for Her Majesty's Revenue and Customs under or by virtue of an enactment.]

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Changes and effects yet to be applied to :

- specified provision(s) savings for amendments by 2018 anaw 1, s. 6, Sch. 6 by S.I. 2019/110 reg. 5

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:
Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 57(3) inserted by 2011 c. 11 Sch. 22 para. 4
- s. 87(3)(a)(ia) inserted by S.I. 2003/2760 Sch. para. 3(4)(a) (This amendment not applied to legislation.gov.uk. The affecting S.I. is revoked and superseded by S.I. 2003/2816)
- Sch. 12 para. 3(2)(aa) inserted by 2007 asp 3 Sch. 5 para. 32 (This effect was superseded by the repeal of Sch. 12 para. 3 by Finance Act 2008 (c. 9), s. 129(4), Sch. 43 para. 16)
- Sch. 12 para. 1A inserted by 2007 c. 15 Sch. 13 para. 147(2) (The amending provision was repealed before coming into force.)
- Sch. 12 para. 1A omitted by 2008 c. 9 Sch. 43 para. 9 (The amending provision was repealed before coming into force.)