



Finance Act 2008

2008 CHAPTER 9

PART 7

ADMINISTRATION

CHAPTER 5

PAYMENT AND ENFORCEMENT

Set off

130 Set-off: England and Wales and Northern Ireland

- (1) This section applies where there is both a credit and a debit in relation to a person.
- (2) The Commissioners may set the credit against the debit (subject to section 131 and any obligation of the Commissioners to set the credit against another sum).
- (3) The obligations of the Commissioners and the person concerned are discharged to the extent of any set-off under subsection (2).
- (4) “Credit”, in relation to a person, means—
 - (a) a sum that is payable by the Commissioners to the person under or by virtue of an enactment, or
 - (b) a relevant sum that may be repaid to the person by the Commissioners.
- (5) For the purposes of subsection (4), in relation to a person, “relevant sum” means a sum that was paid in connection with any liability (including any purported or anticipated liability) of that person to make a payment to the Commissioners under or by virtue of an enactment or under a contract settlement.
- (6) “Debit”, in relation to a person, means a sum that is payable by the person to the Commissioners under or by virtue of an enactment or under a contract settlement.

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- (7) In this section references to sums paid, repaid or payable by or to a person (however expressed) include sums that have been or are to be credited by or to a person.
- (8) This section has effect without prejudice to any other power of the Commissioners to set off amounts.
- (9) In section 429(5) of ITA 2007 (giving through self-assessment)—
- (a) in the definition of “tax repayment”, for “set-off that falls to be made against the individual's liabilities” substitute “relevant set-off”, and
 - (b) insert at the end—

““relevant set-off”, in relation to an individual, means any set-off that falls to be made against the individual's liabilities, other than any set-off under section 130 of FA 2008.”
- (10) Subsections (1) to (8) extend to England and Wales and Northern Ireland only.

131 No set-off where insolvency procedure has been applied

- (1) This section applies where—
- (a) an insolvency procedure has been applied to a person, and
 - (b) there is a post-insolvency credit in relation to that person.
- (2) The Commissioners may not use the power under section 130 to set that post-insolvency credit against a pre-insolvency debit in relation to the person.
- (3) “Post-insolvency credit” means a credit that—
- (a) became due after the insolvency procedure was applied to the person, and
 - (b) relates to, or to matters occurring at, times after it was so applied.
- (4) “Pre-insolvency debit” means a debit that—
- (a) arose before the insolvency procedure was applied to the person, or
 - (b) arose after that procedure was so applied but relates to, or to matters occurring at, times before it was so applied.
- (5) Subject to subsection (6), an insolvency procedure is to be taken, for the purposes of this section, to be applied to a person when—
- (a) a bankruptcy order or winding up order is made or an administrator is appointed in relation to that person,
 - (b) that person is put into administrative receivership,
 - (c) if the person is a corporation, that person passes a resolution for voluntary winding up,
 - (d) a voluntary arrangement comes into force in relation to that person, or
 - (e) a deed of arrangement takes effect in relation to that person.
- (6) In this section references to the application of an insolvency procedure to a person do not include—
- (a) the application of an insolvency procedure to a person at a time when another insolvency procedure applies to the person, or
 - (b) the application of an insolvency procedure to a person immediately upon another insolvency procedure ceasing to have effect.
- (7) For the purposes of this section—

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- (a) a person shall be treated as being in administrative receivership throughout any continuous period for which there is an administrative receiver of that person (disregarding any temporary vacancy in the office of receiver), and
- (b) the reference in subsection (5) to a person being put into administrative receivership shall be interpreted accordingly.

(8) In this section—

“administrative receiver” means an administrative receiver within the meaning of section 251 of the Insolvency Act 1986 (c. 45) or Article 5(1) of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)),

“administrator” means a person appointed to manage the affairs, business and property of another person under Schedule B1 to that Act or to that Order,

“credit” and “debit” have the same meaning as in section 130,

“deed of arrangement” means a deed of arrangement registered in accordance with the Deeds of Arrangement Act 1914 (c. 47) or Chapter 1 of Part 8 the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), and

“voluntary arrangement” means a voluntary arrangement approved in accordance with Part 1 or Part 8 of the Insolvency Act 1986 (c. 45) or Part 2 or Chapter 2 of Part 8 of the Insolvency (Northern Ireland) Order 1989.

(9) This section extends to England and Wales and Northern Ireland only.

132 VAT: requirement to set-off

(1) Section 81 of VATA 1994 (set-off of credits etc) is amended as follows.

(2) For subsection (4C) substitute—

“(4C) In this section, references to the application of an insolvency procedure to a person do not include—

- (a) the application of an insolvency procedure to a person at a time when another insolvency procedure applies to the person, or
- (b) the application of an insolvency procedure to a person immediately upon another insolvency procedure ceasing to have effect.”

(3) In subsection (5)—

- (a) omit paragraph (a),
- (b) in paragraph (b)—
 - (i) for “that Act of 1986” substitute “ the Insolvency Act 1986 ”, and
 - (ii) for “that Order of 1989” substitute “ the Insolvency (Northern Ireland) Order 1989 ”, and
- (c) before the “and” at the end of paragraph (b) insert—
 - “(ba) “administrator” means a person appointed to manage the affairs, business and property of another person under Schedule B1 to that Act or to that Order;”.

133 Set-off etc where right to be paid a sum has been transferred

(1) This section applies where there has been a transfer from one person (“the original creditor”) to another person (“the current creditor”) of a right to be paid a sum (“the transferred sum”) by the Commissioners.

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- (2) The Commissioners—
- (a) must set the transferred sum against a sum payable to them by the original creditor if they would have had an obligation to do so under or by virtue of an enactment had the original creditor retained the right, and
 - (b) may do so if they would have had a power to do so under or by virtue of an enactment or under a rule of law had the original creditor retained the right.
- (3) Subsection (2) applies whether the sum payable by the original creditor to the Commissioners first became payable before or after the transfer (but not if it only became payable after the Commissioners discharged their obligation to pay the transferred sum to the current creditor).
- (4) The following are discharged to the extent of any set-off under this section—
- (a) the obligations of the Commissioners in relation to the current creditor, and
 - (b) the obligations of the original creditor.
- (5) An obligation under or by virtue of an enactment (other than this section) to set the transferred sum against a sum payable to the Commissioners by a person other than the original creditor has effect subject to the obligation under subsection (2)(a) and to any exercise of the power under subsection (2)(b).
- (6) A power under or by virtue of an enactment (other than this section) or under a rule of law to set the transferred sum against a sum payable to the Commissioners by a person other than the original creditor has effect subject to the obligation under subsection (2)(a).
- (7) In determining the sum (if any) to be paid, the Commissioners may make any reduction that they could have made if the original creditor had retained the right to be paid the transferred sum (in addition to any other reduction that they are entitled to make), including a reduction arising from any defence to a claim for the sum.
- (8) In this section—
- (a) references to the transfer of a right are to its transfer by assignment, assignation or any other means, except that they do not include its transfer by means of a direction under section 429 of ITA 2007 (giving through self-assessment returns),
 - (b) references to a sum that is payable by or to a person are to a sum that is to be paid, repaid or credited by or to that person and references to the payment of the sum (however expressed) are to be interpreted accordingly, and
 - (c) where a right in relation to a sum has been transferred more than once, references to the original creditor are to the person from whom the right was first transferred (except in subsection (1)).
- (9) Where the right to be paid the transferred sum is dependent on the making of a claim—
- (a) subsection (2) does not apply unless a claim in respect of the transferred sum has been made, and
 - (b) the references in subsections (2) and (7) to the obligations or powers that the Commissioners would have had if the original creditor had retained the right are references to those that they would have had if the original creditor had also made the claim in respect of the transferred sum.
- (10) This section has effect where the right to be paid the transferred sum was transferred from the original creditor on or after 25 June 2008.

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134 Retained funding bonds: tender by Commissioners

- (1) Section 939 of ITA 2007 (duty to retain bonds where issue treated as payment of interest) is amended as follows.
- (2) After subsection (4) insert—
 - “(4A) If bonds are tendered in accordance with subsection (4), the Commissioners for Her Majesty's Revenue and Customs may tender the bonds in satisfaction of any amount that is payable by the Commissioners to the relevant creditor in connection with the relevant debt.
 - (4B) For the purposes of subsection (4A)—
 - (a) “relevant creditor” and “relevant debt” mean the creditor and the debt mentioned in subsection (1)(a), and
 - (b) a bond is to be taken to have the same value that it had at the time of its issue.
 - (4C) If bonds that are to be tendered in accordance with subsection (4) or (4A) are subject to restrictions on their tender or transfer, the restrictions do not prevent the bonds from being—
 - (a) tendered in accordance with that subsection, or
 - (b) transferred from the person tendering them to the person to whom they are tendered.”
- (3) Omit subsection (5).
- (4) In ITA 2007, after section 940 insert—

“940A No appropriate bond or combination of bonds

- (1) This section applies if—
 - (a) the Commissioners for Her Majesty's Revenue and Customs hold one or more bonds tendered in accordance with section 939(4),
 - (b) the Commissioners wish to tender bonds in accordance with section 939(4A) in satisfaction of an amount payable to the relevant creditor, and
 - (c) the Commissioners consider that they do not hold a bond, or combination of bonds, that is appropriate for satisfying the amount payable.
- (2) If requested to do so by the Commissioners, the bond issuer must secure that the Commissioners hold a bond, or combination of bonds, that the Commissioners consider to be appropriate for satisfying the amount payable.
- (3) If requested to do so by the bond issuer, a person must assist the bond issuer to comply with subsection (2).
- (4) The duty under subsection (2), or under subsection (3), does not apply if it would be impracticable for the bond issuer, or the other person, to comply with the duty.
- (5) The matters which the Commissioners may take into account when considering whether or not a bond or combination of bonds is appropriate for satisfying the amount payable include—

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- (a) the value of a bond at the time of its issue,
 - (b) the interest which the relevant creditor, or any other person, has in a bond (including the nature or size of the interest), and
 - (c) the terms on which a bond is issued.
- (6) For the purposes of this section—
- (a) “bond issuer” means the person by or through whom bonds were issued, and
 - (b) “relevant creditor” and “relevant debt” have the same meanings as in section 939(4A).”
- (5) The amendments made by this section have effect in relation to funding bonds issued on or after 12 March 2008.

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