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SCHEDULES

SCHEDULE 52

RECOVERY OF OVERPAID TAX ETC

PART 2

CORPORATION TAX

Claims for recovery of overpaid tax etc

12 Schedule 18 to FA 1998 (company tax returns, assessments and related matters) is amended as follows.

13 For paragraph 51 (and the heading before that paragraph) substitute—

“Claim for relief for overpaid tax etc

- 51 (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 or direction 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 51A 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 51B to 51F and Part 7 of this Schedule, and
 - (b) Schedule 1A to the Taxes Management Act 1970 (which is applied by that Part).
- (5) Paragraph 51G makes provision about the application of this paragraph and paragraphs 51A to 51F 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 1A to the Taxes Management Act 1970 (following a claim under this paragraph), or
 - (b) by or under another provision of the Corporation Tax Acts.

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- (7) For the purposes of this paragraph and paragraphs 51A to 51G, an amount paid by one person on behalf of another is treated as paid by the other person.

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

- 51A(1) The Commissioners for Her Majesty's Revenue and Customs are not liable to give effect to a claim under paragraph 51 if or to the extent that the claim falls within a case described in this paragraph (see also paragraph 51C(5)).
- (2) Case A is where the amount paid, or liable to be paid, is excessive by reason of—
- (a) a mistake in a claim, election or a notice,
 - (b) a mistake consisting of making or giving, or failing to make or give, a claim, election or notice,
 - (c) a mistake in allocating expenditure to a pool for the purposes of the Capital Allowances Act or a mistake consisting of making, or failing to make, such an allocation, or
 - (d) a mistake in bringing a disposal value into account for the purposes of that Act or a mistake consisting of bringing, or failing to bring, such a value into account.
- (3) Case B is where the claimant is or will be able to seek relief by taking other steps under the Corporation Tax Acts.
- (4) Case C is where the claimant—
- (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 section 54 of the Taxes Management Act 1970 (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—

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- (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 corporation tax, and
 - (b) liability was calculated in accordance with the practice generally prevailing at the time.

Making a claim

- 51B (1) A claim under paragraph 51 may not be made more than 4 years after the end of the relevant accounting period.
- (2) In relation to a claim made in reliance on paragraph 51(1)(a), the relevant accounting period is—
- (a) where the amount paid, or liable to be paid, is excessive by reason of a mistake in a company tax return or returns, the accounting period to which the return (or, if more than one, the first return) relates, and
 - (b) otherwise, the accounting period in respect of which the amount was paid.
- (3) In relation to a claim made in reliance on paragraph 51(1)(b), the relevant accounting period is the accounting period to which the assessment, determination or direction relates.
- (4) A claim under paragraph 51 may not be made by being included in a company tax return.

The claimant: one person accountable for amounts payable by another

- 51C (1) Sub-paragraph (2) applies where a person (“P”) is accountable to the Commissioners for Her Majesty's Revenue and Customs under a relevant enactment for an amount that has been or is to be set off against a liability of another person (“T”) under a relevant enactment.
- (2) A claim under paragraph 51 in respect of the amount may be made only by T.
- (3) Sub-paragraph (4) applies where—
- (a) a person (“P”) has paid an amount described in sub-paragraph (1) in the belief that P was accountable to the Commissioners for the amount under a relevant enactment, but
 - (b) P was not so accountable.
- (4) A claim under paragraph 51 in respect of the amount may be made only by P.
- (5) The Commissioners for Her Majesty's Revenue and Customs are not liable to give effect to a claim under sub-paragraph (4) if or to the extent that the amount has been repaid to T or set against amounts payable to the Commissioners by T.

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- (6) “Relevant enactment” means—
- (a) Chapter 3 of Part 3 of the Finance Act 2004 or regulations under that Chapter (construction industry scheme), or
 - (b) any other provision of or made under the Taxes Acts.

The claimant: partnerships

- 51D(1) This paragraph applies where—
- (a) a trade, profession or business is carried on by two or more persons in partnership,
 - (b) an amount is paid, or liable to be paid, by one or more of those persons in accordance with a self-assessment, and
 - (c) the amount is excessive by reason of a mistake in a partnership return.
- (2) A claim under paragraph 51 in respect of the amount—
- (a) may be made by the relevant partner nominated to make the claim by all of the relevant partners, and
 - (b) may not be made by any other person.
- (3) In relation to such a claim, references in paragraphs 51A to 51F to the claimant are to any of the relevant partners.
- (4) “Relevant partner” means—
- (a) a person who was a partner in the partnership at any time during the period in respect of which the partnership return was made, or
 - (b) the personal representative of such a person.

Assessment of claimant in connection with claim

- 51E (1) This paragraph applies where—
- (a) a claim is made under paragraph 51,
 - (b) the grounds for giving effect to the claim also provide grounds for a discovery assessment or discovery determination on the claimant in respect of any accounting period, and
 - (c) such an assessment or determination could be made but for a relevant restriction.
- (2) The following are relevant restrictions—
- (a) the restrictions in paragraphs 42 to 45, and
 - (b) the expiry of a time limit for making a discovery assessment or discovery determination.
- (3) Where this paragraph applies—
- (a) the relevant restrictions are to be disregarded, and
 - (b) the discovery assessment or discovery determination is not out of time if it is made before the final determination of the claim.
- (4) 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).

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Amendment of partnership return etc in connection with claim

- 51F (1) This paragraph applies where—
- (a) a claim is made under paragraph 51,
 - (b) the claimant is one of two or more persons carrying on a trade, profession or business in partnership,
 - (c) the grounds for giving effect to the claim also provide grounds for amending, under section 30B(1) of the Taxes Management Act 1970 (discovery of loss of tax from partnership), a return made by the partnership or any of the partners in respect of any period, and
 - (d) such an amendment could be made but for a relevant restriction.
- (2) The following are relevant restrictions—
- (a) the conditions in section 30B(4) to (6) of the Taxes Management Act 1970, and
 - (b) the expiry of a time limit for making an assessment under that section.
- (3) Where this paragraph applies—
- (a) the relevant conditions are to be disregarded, and
 - (b) the amendment is not out of time if it is made before the final determination of the claim.
- (4) 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

- 51G (1) In paragraph 51(1)(a) the reference to an amount paid by a company 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 51 in respect of that amount—
- (a) the references to the claimant in paragraph 51A(5) to (7) (Cases D, E and F) have effect as if they included the taxpayer,
 - (b) the reference to the claimant in paragraph 51A(8) (Case G) has effect as if it were a reference to the taxpayer,
 - (c) the references to the claimant in paragraphs 51E(1)(b) and 51F(1)(b) have effect as if they were references to the taxpayer, and
 - (d) references to tax in Schedule 1A to the Taxes Management Act 1970 (as it applies to a claim under this Part of this Schedule) 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 or discovery determination on the taxpayer in respect of any chargeable period.

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- (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 or determination.
- (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."

14 Accordingly, in the heading of Part 6, at the beginning insert "OVERPAID TAX,".

15 (1) Paragraph 62 (consequential claims etc that may be made) is amended as follows.

(2) After sub-paragraph (1) insert—

“(1A) This paragraph applies to a claim under paragraph 51 relating to the accounting period in respect of which the amendment or assessment is made.”

(3) In sub-paragraph (2), for “a claim” substitute “ any other claim ”.

16 In paragraph 88 (conclusiveness of amounts stated in return), insert at the end—

“(8) Nothing in this paragraph affects a power of the company making the return to make a claim under paragraph 51 (claim for relief for overpaid tax).”

Consequential amendment

17 In Schedule 1A to TMA 1970 (claims etc not included in returns), in paragraph 1, in the definition of “partnership claim”, after “Act” insert “ or paragraph 51D of Schedule 18 to the Finance Act 1998 (claims for overpaid corporation tax) ”.

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