

*Status: Point in time view as at 16/12/2010.*

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## SCHEDULES

### SCHEDULE 12

#### RECOVERY OF OVERPAID TAX ETC

#### PART 2

#### PETROLEUM REVENUE TAX

##### *Claims for recovery of overpaid tax etc*

- 6 Schedule 2 to OTA 1975 (management and collection of petroleum revenue tax) is amended as follows.
- 7 In the Table in paragraph 1(1) (applying provisions of TMA 1970 in relation to management and collection of petroleum revenue tax), omit the entry relating to section 33 of TMA 1970.
- 8 In paragraph 10(1A) (time limit for assessments and determinations) for “and 12B” substitute “, 12B and 13E”.
- 9 In paragraph 12(1B) (disapplication of time limits for further assessments and determinations)—
- (a) omit the “or” at the end of paragraph (a), and
  - (b) after that paragraph insert—
    - “(aa) a claim under paragraph 13A (see paragraph 13E), or”.
- 10 After paragraph 13 insert—

##### *“Claim for relief for overpaid tax etc*

- 13A(1) This paragraph applies where—
- (a) a participator has paid an amount by way of tax but believes that the tax was not due, or
  - (b) a participator has been assessed as liable to pay an amount by way of tax but believes that the tax is not due.
- (2) The participator may make a claim to the Commissioners for Her Majesty's Revenue and Customs (“HMRC”) for repayment or discharge of the amount.
- (3) Paragraph 13B makes provision about cases in which HMRC are not liable to give effect to a claim under this paragraph.
- (4) Paragraphs 13C to 14I make further provision about making and giving effect to claims under this paragraph.
- (5) Paragraph 13F makes provision about the application of this paragraph and paragraphs 13B to 13E to amounts paid under contract settlements.

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- (6) HMRC 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 (following a claim under this paragraph), or
  - (b) by or under another provision of the Oil Taxation Acts.
- (7) For the purposes of this paragraph and paragraphs 13B to 13F, an amount paid by one person on behalf of another is treated as paid by the other person.
- (8) In this paragraph and paragraphs 13B to 13F, “the Oil Taxation Acts” means—
  - (a) Parts 1 and 3 of this Act,
  - (b) the Oil Taxation Act 1983, and
  - (c) any other enactment relating to petroleum revenue tax.

*Cases in which HMRC not liable to give effect to a claim*

- 13B (1) HMRC are not liable to give effect to a claim under paragraph 13A 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, election or notice or a nomination under Schedule 10 to FA 1987, or
    - (b) a mistake consisting of making or giving, or failing to make or give, a claim, election or notice or a nomination under Schedule 10 to FA 1987.
  - (3) Case B is where the participator—
    - (a) has or could have sought relief by making a claim for expenditure to be allowed under section 3 or 4 (allowance of expenditure), or
    - (b) is or will be able to seek relief by taking other steps under the Oil Taxation Acts.
  - (4) Case C is where the participator—
    - (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 participator relating to the amount paid or liable to be paid, or
    - (b) have been put to HMRC in the course of an appeal by the participator relating to that amount that is treated as having been determined by a tribunal (by virtue of paragraph 14(9) (settling of appeals by agreement)).
  - (6) Case E is where the participator 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 participator relating to the amount paid, or liable to be paid, in the course of which the ground could

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- 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 participator withdrew a relevant appeal to a court or tribunal, and
  - (c) the end of the period in which the participator 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 participator by HMRC, or
  - (b) in accordance with an agreement between the participator and HMRC 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 participator's liability to tax, and
  - (b) liability was calculated in accordance with the practice generally prevailing at the time.

#### *Making a claim*

- 13C (1) A claim under paragraph 13A may not be made more than 4 years after the end of the relevant chargeable period.
- (2) In relation to a claim made in reliance on paragraph 13A(1)(a), the relevant chargeable period is—
- (a) where the amount paid, or liable to be paid, is excessive by reason of a mistake in a return or returns under paragraph 2 or 5, the chargeable period to which the return (or, if more than one, the first return) relates, and
  - (b) otherwise, the chargeable period in respect of which the amount was paid.
- (3) In relation to a claim made in reliance on paragraph 13A(1)(b), the relevant chargeable period is the chargeable period to which the assessment relates.
- (4) A claim under paragraph 13A must be in such form as the HMRC may prescribe.

#### *Decision on claim*

- 13D HMRC must—
- (a) make a decision on the claim, and
  - (b) by notice inform the participator of their decision.

#### *Assessment of claimant in connection with claim*

- 13E (1) This paragraph applies where—
- (a) a claim is made under paragraph 13A,
  - (b) the grounds for giving effect to the claim also provide grounds for making an assessment or determination under paragraph 10 or 12,

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- or an amendment of such an assessment or determination, on the participator in respect of any accounting period, and
- (c) such an assessment, determination or amendment could be made but for the expiry of a time limit in paragraph 10(1A), 12(1A), 12A or 12B.

- (2) Where this paragraph applies—
- (a) the time limit does not apply, and
- (b) the assessment, determination or amendment is not out of time if it is made before the final determination of the claim.
- (3) 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*

- 13F (1) In paragraph 13A(1)(a) the reference to an amount paid by a participator 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 13A in respect of that amount—
- (a) the references to the participator in paragraph 13B(5) to (7) (Cases D, E and F) have effect as if they included the taxpayer,
- (b) the reference to the participator in paragraph 13B(8) (Case G) has effect as if it were a reference to the taxpayer, and
- (c) the reference to the participator in paragraph 13E(1)(b) has effect as if it were a reference to the taxpayer.
- (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 making an assessment or determination under paragraph 10 or 12, or an amendment of such an assessment or determination, on the taxpayer in respect of any chargeable period.
- (5) HMRC 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, determination or amendment.
- (6) The obligations of HMRC 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 HMRC under or by virtue of an enactment.”

11 (1) Paragraph 14 (appeals) is amended as follows.

(2) After sub-paragraph (1) insert—

“(1A) A participator who has made a claim under paragraph 13A may appeal from the decision on the claim by notice in writing given to HMRC within 30 days after the date of issue of the notice of the decision.”

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- (3) In sub-paragraph (9) for “section 33 of the Taxes Management Act 1970 as applied by paragraph 1 above” substitute “ paragraph 13A ”.
- (4) In sub-paragraph (10) for “the appeal that” substitute “ an appeal under sub-paragraph (1) ”.
- (5) After sub-paragraph (10) insert—
  - “(10A) If an appeal under sub-paragraph (1A) is notified to the tribunal and it appears to the tribunal that the decision is wrong, the tribunal shall substitute such decision as may be required.”

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