

*Status: Point in time view as at 30/11/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Finance Act 1997, Part V. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 5

#### INDIRECT TAXES: OVERPAYMENTS ETC

#### PART V

#### RECOVERY OF EXCESS PAYMENTS BY THE COMMISSIONERS

##### *Assessment for excessive repayment*

- 14 (1) Where—
- (a) any amount has been paid at any time to any person by way of a repayment under a relevant repayment provision, 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 any person is liable to pay any amount to the Commissioners in pursuance of an obligation imposed by virtue of paragraph 3(4)(a) above, the Commissioners may, to the best of their judgement, assess the amount due from that person and notify it to him.
- (3) In this paragraph “relevant repayment provision” means—
- (a) section 137A of the <sup>M1</sup>Customs and Excise Management Act 1979 (recovery of overpaid excise duty);
  - (b) paragraph 8 of Schedule 7 to the <sup>M2</sup>Finance Act 1994 (recovery of overpaid insurance premium tax); <sup>F1</sup> . . .
  - (c) paragraph 14 of Schedule 5 to the Finance Act 1996 (recovery of overpaid landfill tax) [<sup>F2</sup>or
  - (d) Part 1 of Schedule 3 to the Finance Act 2001 (payments made and rebates disallowed in error).]

#### Textual Amendments

- F1** Word in Sch. 5 para. 14(3)(b) repealed (1.11.2001) by 2001 c. 9, ss. 15, 110, Sch. 3 para. 19(2), Sch. 33 Pt. I(4); S.I. 2001/3300, art. 2
- F2** Sch. 5 para. 14(3)(d) and the word “or” immediately preceding inserted (1.11.2001) by 2001 c. 9, s. 15, Sch. 3 para. 19(2); S.I. 2001/3300, art. 2

#### Marginal Citations

- M1** 1979 c. 2.  
**M2** 1994 c. 9.

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*Assessment for overpayments of interest*

- 15 (1) Where—
- (a) any amount has been paid to any person by way of interest under a relevant interest provision, but
  - (b) that person was not entitled to that amount under that provision,
- 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.
- (2) In this paragraph “relevant interest provision” means—
- <sup>F3</sup>(a) . . . . .
  - (b) paragraph 22 of Schedule 7 to that Act (interest payable by the Commissioners on overpayments etc. of insurance premium tax); <sup>F4</sup>. . .
  - (c) paragraph 29 of Schedule 5 to the <sup>M3</sup>Finance Act 1996 (interest payable by the Commissioners on overpayments etc. of landfill tax) [<sup>F5</sup>or.
  - (d) Part 2 of Schedule 3 to the Finance Act 2001 (interest).]

**Textual Amendments**

- F3** Sch. 5 para. 15(2)(a) repealed (1.11.2001) by 2001 c. 9, ss. 15, 110, Sch. 3 para. 19(3), **Sch. 33 Pt. I(4)**; S.I. 2001/3300, **art. 2**
- F4** Word in Sch. 5 para. 15(2)(b) repealed (1.11.2001) by 2001 c. 9, ss. 15, 110, Sch. 3 para. 19(3), **Sch. 33 Pt. I(4)**; S.I. 2001/3300, **art. 2**
- F5** Sch. 5 para. 15(2)(d) and the word “or” immediately preceding it inserted (1.11.2001) by 2001 c. 9, s. 15, **Sch. 3 para. 19(3)**; S.I. 2001/3300, **art. 2**

**Marginal Citations**

- M3** 1996 c. 8.

*Assessments under paragraphs 14 and 15*

- 16 (1) An assessment under paragraph 14 or 15 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 14 or 15 above, it shall be recoverable (subject to any provision having effect in accordance with paragraph 19 below) as if it were relevant tax 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*

- 17 (1) Where an assessment is made under paragraph 14 or 15 above, the whole of the amount assessed shall carry interest at the rate applicable under section 197 of the Finance Act 1996 from the date on which the assessment is notified until payment.
- (2) Where any person is liable to interest under sub-paragraph (1) above the Commissioners may assess the amount due by way of interest and notify it to him.

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- (3) 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.
- (4) Interest under this paragraph shall be paid without any deduction of income tax.
- (5) A notice of assessment under this paragraph shall specify a date, being not later than the date of the notice, to which the amount of interest is calculated; and, if the interest continues to accrue after that date, a further assessment or assessments may be made under this paragraph in respect of amounts which so accrue.
- (6) If, within such period as may be notified by the Commissioners to the person liable for interest under sub-paragraph (1) above, the amount referred to in that sub-paragraph is paid, it shall be treated for the purposes of that sub-paragraph as paid on the date specified as mentioned in sub-paragraph (5) above.
- (7) Where an amount has been assessed and notified to any person under this paragraph it shall be recoverable as if it were relevant tax due from him.
- (8) Sub-paragraph (7) above does not have effect if, or to the extent that, the assessment in question has been withdrawn or reduced.

#### *Supplementary assessments*

- 18 If it appears to the Commissioners that the amount which ought to have been assessed in an assessment under paragraph 14, 15 or 17 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 shall notify the person concerned accordingly.

#### *Review of decisions and appeals*

- 19 (1) Sections [F<sup>6</sup>13A to 16] of the M<sup>4</sup>Finance Act 1994 (review and appeals) shall have effect in relation to any decision which—
- (a) is contained in an assessment under paragraph 14, 15 or 17 above,
  - (b) is a decision about whether any amount is due to the Commissioners or about how much is due, and
  - (c) is made in a case in which the relevant repayment provision is section 137A of the M<sup>5</sup>Customs and Excise Management Act 1979 or [F<sup>7</sup>Part 1 of Schedule 3 to the Finance Act 2001 or the relevant interest provision is Part 2 of that Schedule],
- as if that decision were such a decision as is mentioned in section [F<sup>8</sup>13A(2)(b)] of that Act of 1994.
- (2) Sections [F<sup>9</sup>59 to 60] of that Act of 1994 (review and appeal in the case of insurance premium tax) shall have effect in relation to any decision which—
- (a) is contained in an assessment under paragraph 14, 15 or 17 above,
  - (b) is a decision about whether any amount is due to the Commissioners or about how much is due, and

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- (c) is made in a case in which the relevant repayment provision is paragraph 8 of Schedule 7 to that Act or the relevant interest provision is paragraph 22 of that Schedule,  
 as if that decision were a decision to which section 59 of that Act applies.
- (3) Sections 54 to 56 of the <sup>M6</sup>Finance Act 1996 (review and appeal in the case of landfill tax) shall have effect in relation to any decision which—
- (a) is contained in an assessment under paragraph 14, 15 or 17 above,
- (b) is a decision about whether any amount is due to the Commissioners or about how much is due, and
- (c) is made in a case in which the relevant repayment provision is paragraph 14 of Schedule 5 to that Act or the relevant interest provision is paragraph 29 of that Schedule,  
 as if that decision were a decision to which section 54 of that Act applies.

#### Textual Amendments

- F6** Words in Sch. 5 para. 19(1) 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. 244(2)(a)**
- F7** Words in Sch. 5 para. 19(1)(c) substituted (1.11.2001) by [2001 c. 9, s. 15](#), **Sch. 3 para. 19(4)**; [S.I. 2001/3300](#), **art. 2**
- F8** Word in Sch. 5 para. 19(1) 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. 244(2)(b)**
- F9** Words in Sch. 5 para. 19(2) 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. 244(3)**

#### Marginal Citations

- M4** 1994 c. 9.
- M5** 1979 c. 2.
- M6** 1996 c. 8.

#### *Interpretation of Part V*

- 20 (1) In this Part of this Schedule “the Commissioners” means the Commissioners of Customs and Excise.
- (2) In this Part of this Schedule “relevant tax”, in relation to any assessment, means—
- (a) a duty of excise if the assessment relates to—
- (i) a repayment of an amount paid by way of such a duty,
- (ii) an overpayment of interest under [<sup>F10</sup>Part 2 of Schedule 3 to the Finance Act 2001], or
- (iii) interest on an amount specified in an assessment in relation to which the relevant tax is a duty of excise;
- (b) insurance premium tax if the assessment relates to—
- (i) a repayment of an amount paid by way of such tax,
- (ii) an overpayment of interest under paragraph 22 of Schedule 7 to the Finance Act 1994, or
- (iii) interest on an amount specified in an assessment in relation to which the relevant tax is insurance premium tax;
- and

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- (c) landfill tax if the assessment relates to—
- (i) a repayment of an amount paid by way of such tax,
  - (ii) an overpayment of interest under paragraph 29 of Schedule 5 to the <sup>M7</sup>Finance Act 1996, or
  - (iii) interest on an amount specified in an assessment in relation to which the relevant tax is landfill tax.
- (3) For the purposes of this Part of this Schedule notification to a personal representative, trustee in bankruptcy, [<sup>F11</sup>trustee or interim trustee in a sequestration], receiver, liquidator or person otherwise acting in a representative capacity in relation to another shall be treated as notification to the person in relation to whom he so acts.

#### Textual Amendments

**F10** Words in Sch. 5 para. 20(2)(a)(ii) substituted (1.11.2001) by 2001 c. 9, s. 15, **Sch. 3 para. 19(5)**; S.I. 2001/3300, **art. 2**

**F11** Words in Sch. 5 para. 20(3) 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. 18**

#### Marginal Citations

**M7** 1996 c. 8.

#### *Consequential amendment*

- 21 In section 197(2) of the Finance Act 1996 (enactments for which interest rates are set under section 197), after paragraph (d) there shall be inserted “and
- (e) paragraph 17 of Schedule 5 to the Finance Act 1997 (interest on amounts repayable in respect of overpayments by the Commissioners in connection with excise duties, insurance premium tax and landfill tax).”

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