

Status: Point in time view as at 06/04/2005.

Changes to legislation: There are currently no known outstanding effects for the Finance Act 2002, SCHEDULE 39. (See end of Document for details)

SCHEDULES

SCHEDULE 39

Section 134(1)

RECOVERY OF TAXES ETC DUE IN OTHER MEMBER STATES

Modifications etc. (not altering text)

C1 Sch. 39 applied (with modifications) (22.7.2004) by [Finance Act 2004 \(c. 12\), s. 322](#)

Introduction

- 1 (1) This Schedule applies where in accordance with the Mutual Assistance Recovery Directive an authority in another member State makes a request for the recovery in the United Kingdom of a sum claimed by that authority in that State.
- (2) In this Schedule—
 - (a) the “Mutual Assistance Recovery Directive” has the meaning given by section 134; and
 - (b) the “foreign claim” means the claim in relation to which a request under that Directive is made as mentioned in sub-paragraph (1).

Enforcement of claims in the United Kingdom

- 2 (1) Subject to the following provisions of this Schedule—
 - (a) such proceedings may be taken by or on behalf of the relevant UK authority to enforce the foreign claim, by way of legal proceedings, distress, diligence or otherwise, as might be taken to enforce a corresponding UK claim, and
 - (b) any enactment or rule of law relating to a corresponding UK claim shall apply, with any necessary adaptations, in relation to the foreign claim.
- (2) “The relevant UK authority” means—
 - (a) in relation to matters corresponding to those within the care and management of the Commissioners of Customs and Excise, those Commissioners;
 - (b) in relation to matters corresponding to those within the care and management of the Commissioners of Inland Revenue, those Commissioners;
 - (c) in relation to agricultural levies of the European Community, the relevant Minister, that is—
 - (i) in England, the Secretary of State,
 - (ii) in Scotland, the Scottish Ministers,
 - (iii) in Wales, the National Assembly for Wales, and
 - (iv) in Northern Ireland, the Department of Agriculture and Rural Development.
- (3) A “corresponding UK claim” means a claim in the United Kingdom corresponding to the foreign claim.

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- (4) The enactments referred to in sub-paragraph (1)(b) include, in particular, those relating to the recovery of penalties and of interest on unpaid amounts.

Power to make supplementary provision by regulations

- 3 (1) The Treasury may make provision by regulations—
- (a) as to what is a corresponding UK claim in relation to any description of foreign claim, and
 - (b) as to such other procedural and other supplementary matters as appear to them appropriate for implementing the Mutual Assistance Recovery Directive.
- (2) In relation to a case where there is no claim in the United Kingdom that is directly equivalent to a particular description of foreign claim, regulations under sub-paragraph (1)(a) may prescribe as the corresponding UK claim one that appears to the Treasury to be closest to an equivalent.
- (3) The power conferred by sub-paragraph (1)(b) includes power to make any provision appearing to the Treasury to be appropriate to give effect to any Commission Directive laying down detailed rules for implementing the Mutual Assistance Recovery Directive.
- (4) The relevant UK authority may make provision by regulations as to the application, non-application or adaptation in relation to foreign claims of any enactment or rule of law applicable to corresponding UK claims.

This is without prejudice to the application of any such enactment or rule in relation to foreign claims in circumstances not dealt with by regulations under this sub-paragraph.

- (5) Regulations under this paragraph shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the House of Commons.

Proceedings on contested claims

- 4 (1) Except where permitted by virtue of regulations under paragraph 3(4) applying an enactment that permits such proceedings in the case of a corresponding UK claim, no proceedings under this Schedule shall be taken against a person if he shows that proceedings relevant to his liability on the foreign claim are pending, or are about to be instituted, before a court, tribunal or other competent body in the member State in question.
- (2) For this purpose proceedings are pending so long as an appeal may be brought against any decision in the proceedings.
- (3) Proceedings under this Schedule may be taken if the proceedings in the member State are not prosecuted or instituted with reasonable expedition.

Claims determined in taxpayer's favour

- 5 (1) No proceedings under this Schedule shall be taken against a person if a final decision on the foreign claim has been given in his favour by a court, tribunal or other competent body in the member State in question.

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- (2) For this purpose a final decision is one against which no appeal lies or against which an appeal lies within a period that has expired without an appeal having been brought.
- (3) If he shows that such a decision has been given in respect of part of the claim no proceedings under this Schedule shall be taken in relation to that part.

Other supplementary provisions

- 6 For the purposes of proceedings under this Schedule—
- (a) a request made by an authority in another member State shall be taken to be duly made in accordance with the Mutual Assistance Recovery Directive unless the contrary is proved, and
 - (b) except as mentioned in paragraph 5, no question may be raised as to a person's liability on the foreign claim.

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