

FINANCE ACT 2013

EXPLANATORY NOTES

INTRODUCTION

Section 231: Overpayment Relief: Generally Prevailing Practice Exclusion and Eu Law

Summary

1. **Section 231** removes the practice generally prevailing restriction within overpayment relief provisions if the tax overpaid was charged contrary to European Union (EU) law.

Details of the Section

2. Subsection (1) amends the overpayment relief provision for income tax and capital gains tax in Schedule 1AB to TMA 1970 by inserting new sub-paragraphs (9A) and (9B) into paragraph 2.
3. New sub-paragraph (9A) disapplies two restrictions (Cases G and H) for overpayment relief if the tax was charged contrary to EU law. The restrictions apply to tax which is calculated in accordance with the practice generally prevailing.
4. New sub-paragraph (9B) defines when tax is charged contrary to EU law.
5. Subsections (2) to (4) make similar changes to disapply Case G in the overpayment relief provisions for petroleum revenue tax, corporation tax and stamp duty land tax.
6. Subsection (5) provides that the amendments will have effect for claims made six months or more after Royal Assent to the Finance Act.

Background

7. Overpayment relief provisions provide relief where tax has been paid or a person is liable to tax as a result of an assessment, determination or direction and the taxpayer believes that the tax is not due. There are four such provisions applying to income tax and capital gains tax, corporation tax, petroleum revenue tax, and stamp duty land tax.
8. Cases A to G (or H in the case of employment income) of the overpayment provisions list circumstances in which relief is not due. Case G (H in the case of employment income) disallows relief where the amount paid or liable to be paid is excessive by reason of a mistake in calculating liability and the liability was calculated in accordance with the practice generally prevailing at the time.
9. Member States of the EU are obliged to provide remedies for tax levied contrary to EU law. In most cases such tax will have been paid in accordance with the practice generally prevailing at the time.
10. The Court of Appeal in *Test Claimants in the Franked Investment Income Group Litigation v Commissioners of Inland Revenue and another* [2010] STC 1251 (the “FII GLO litigation”) held that the restriction for practice generally prevailing in error or

*These notes refer to the Finance Act 2013 (c.29)
which received Royal Assent on 17 July 2013*

mistake relief (the predecessor of overpayment relief) could be read out of the provision when claims were made in respect of tax charged contrary to EU law.

11. Following this decision HM Revenue & Customs (HMRC) explained in Revenue & Customs Brief 22/10 that in applying the new overpayment relief provisions claims in respect of tax paid in breach of EU law would not be disallowed on the grounds that it was paid in accordance with generally prevailing practice.
12. The Supreme Court in the FII GLO litigation ([2012] UKSC 19) called the Court of Appeal decision into question. Although the Supreme Court did not consider overpayment relief the judgment has created uncertainty about the application of those provisions which this section resolves.
13. The changes made by this section place on a legislative footing the current practice set out in Revenue & Customs Brief 22/10, ensuring that the overpayment relief provisions provide appropriate relief for overpayment of tax charged contrary to EU law.