

Status: Point in time view as at 06/04/2016.

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SCHEDULES

SCHEDULE 33

ANNUAL TAX ON ENVELOPED DWELLINGS: RETURNS, ENQUIRIES, ASSESSMENTS AND APPEALS

PART 6

RELIEF IN CASE OF OVERPAID TAX OR EXCESSIVE ASSESSMENT

Relief in case of double assessment

- 28 (1) A person who believes that tax has been assessed on that person more than once in respect of the same matter may make a claim to the Commissioners for Her Majesty's Revenue and Customs for relief against any double charge.
- (2) Schedule 11A to FA 2003 (claims not included in returns) applies in relation to a claim under sub-paragraph (1) as it applies to a claim such as is mentioned in paragraph 1 of that Schedule.

Claim for relief for overpaid tax etc

- 29 (1) This paragraph applies where—
- (a) a person has paid an amount by way of tax but believes the tax was not chargeable, or
 - (b) a person has been assessed as chargeable to an amount of tax, or a determination has been made that a person is chargeable to an amount of tax but the person believes the tax is not chargeable.
- (2) The person may make a claim to the Commissioners for Her Majesty's Revenue and Customs for the amount to be repaid or discharged.
- (3) Where this paragraph applies, the Commissioners for Her Majesty's Revenue and Customs are not liable to give relief, except as provided in this Schedule or by or under any other provision of this Part of this Act.
- (4) For the purposes of this paragraph and paragraphs 30 to 34, an amount paid by one person on behalf of another is treated as paid by the other person.

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

- 30 (1) The Commissioners for Her Majesty's Revenue and Customs are not liable to give effect to a claim under paragraph 29 if or to the extent that the claim falls within a case described in this paragraph.
- (2) Case A is where the amount of tax paid, or liable to be paid, is excessive because of—
- (a) a mistake in a claim, or

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- (b) a mistake consisting of making, or failing to make, a claim.
- (3) Case B is where the claimant is or will be able to seek relief by taking other steps under this Part of this Act.
- (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 HMRC 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 paragraph 46 (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 a relevant appeal in the course of which the ground could have been put forward 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;
 - (c) the end of the period in which the claimant was entitled to make a relevant appeal to a court or tribunal.
- In this sub-paragraph “relevant appeal” means an appeal by the claimant relating to the amount paid or liable to be paid.
- (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 claimant by HMRC, or
 - (b) in accordance with an agreement between the claimant 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 claimant's liability to tax, and
 - (b) liability was calculated in accordance with the practice generally prevailing at the time.
- (9) Case G does not apply where the amount paid, or liable to be paid, is tax which has been charged contrary to EU law.
- (10) For the purposes of sub-paragraph (9), an amount of tax is charged contrary to EU law if, in the circumstances in question, the charge to tax is contrary to—
- (a) the provisions relating to the free movement of goods, persons, services and capital in Titles II and IV of Part 3 of the Treaty on the Functioning of the European Union, or
 - (b) the provisions of any subsequent treaty replacing the provisions mentioned in paragraph (a).

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Making a claim

- 31 (1) A claim under paragraph 29 must be made within the period of 4 years after the end of the chargeable period to which the payment by way of tax, or the assessment or determination, relates.
- (2) A claim under paragraph 29 may not be made by being included in a return.
- (3) Schedule 11A to FA 2003 (claims not included in returns) applies in relation to a claim under paragraph 29 as it applies to a claim such as is mentioned in paragraph 1 of that Schedule.

The claimant: partnerships

- 32 (1) This paragraph is about the application of paragraph 29 in a case where either—
- (a) (in a case falling within sub-paragraph (1)(a) of that paragraph) the person paid the amount in question in the capacity of a responsible partner or representative partner, or
- (b) (in a case falling within sub-paragraph (1)(b) of that paragraph) the assessment was made on, or the determination related to the liability of, the person in such a capacity.
- (2) In such a case, only a relevant person who has been nominated to do so by all of the relevant persons may make a claim under paragraph 29 in respect of the amount in question.
- (3) The relevant persons are all the persons who would have been liable as responsible partners to pay the amount in question had the payment been due or (in a case falling within sub-paragraph (1)(b)) had the assessment or determination been correctly made.

Assessment of claimant in connection with claim

- 33 (1) This paragraph applies where—
- (a) a claim is made under paragraph 29 (relief for overpaid tax etc),
- (b) the grounds for giving effect to the claim also provide grounds for a discovery assessment on the claimant in respect of single-dwelling interest, and
- (c) such an assessment could be made but for a relevant restriction.
- (2) In a case falling within paragraph 32(1)(a) or (b), the reference to the claimant in sub-paragraph (1)(b) of this paragraph includes any relevant person (as defined in paragraph 32(3)).
- (3) The following are relevant restrictions—
- (a) the restrictions in paragraph 24 (assessment where return has been delivered);
- (b) the expiry of a time limit for making a discovery assessment.
- (4) Where this paragraph applies—
- (a) the relevant restrictions are to be disregarded, and
- (b) the discovery assessment is not out of time if it is made before the final determination of the claim.

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- (5) 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

- 34 (1) In paragraph 29(1)(a) the reference to an amount paid by a person 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 29 in respect of that amount—
- (a) the references to the claimant in paragraph 30(5), (6) and (7) (Cases D, E and F) have effect as if they included the taxpayer,
 - (b) the reference to the claimant in paragraph 30(8) (case G) has effect as if it were a reference to the taxpayer,
 - (c) the reference to the claimant in paragraph 33(1)(b) has effect as if it were a reference to the taxpayer, and
 - (d) references to tax in Schedule 11A to FA 2003 (as it applies to a claim under paragraph 29) include the amount paid under the contract settlement.
- (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 on the taxpayer in respect of any single-dwelling interest.
- (5) The Commissioners for Her Majesty's Revenue and Customs may set any amount repayable to the payer as a result of the claim against any amount payable by the taxpayer as a result of the assessment.
- (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.

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