
STATUTORY INSTRUMENTS

2011 No. 1037

The Enactment of Extra-Statutory Concessions Order 2011

Recovery of overpaid tax: special relief

3.—(1) Part 6 of Schedule 18 to the Finance Act 1998⁽¹⁾ (excessive assessments or repayments etc) is amended as follows.

(2) In paragraph 51A(1), for “paragraph 51C(5)” substitute “paragraphs 51BA and 51C(5)”.

(3) In paragraph 51B, at the end insert—

“(5) Sub-paragraph (1) is subject to paragraph 51BA.”.

(4) After paragraph 51B insert—

“Determinations under paragraphs 36 and 37: special rules

51BA.—(1) This paragraph applies where—

- (a) a determination has been made under paragraph 36 or 37 of an amount that a person is liable to pay by way of tax, but the person believes the tax is not due or, if it has been paid, was not due,
- (b) relief would be available under paragraph 51 but for the fact that—
 - (i) the claim falls within Case C (see paragraph 51A(4)),
 - (ii) the claim falls within Case F(a) (see paragraph 51A(7)(a)), or
 - (iii) more than 4 years have elapsed since the end of the relevant accounting period (see paragraph 51B(1)), and
- (c) if the claim falls within Case F(a), the person was neither present nor legally represented during the enforcement proceedings in question.

(2) A claim under paragraph 51 for repayment or discharge of the amount may be made, and effect given to it, despite paragraph 51A(4), paragraph 51A(7)(a) or paragraph 51B(1), as the case may be.

(3) But the Commissioners for Her Majesty’s Revenue and Customs are not liable to give effect to a claim made in reliance on this paragraph unless conditions A, B and C are met.

(4) Condition A is that in the opinion of the Commissioners for Her Majesty’s Revenue and Customs it would be unconscionable for the Commissioners for Her Majesty’s Revenue and Customs to seek to recover the amount (or to withhold repayment of it, if it has already been paid).

(5) Condition B is that the person’s affairs (as respects matters concerning the Commissioners for Her Majesty’s Revenue and Customs) are otherwise up to date or arrangements have been put in place, to the satisfaction of the Commissioners for Her Majesty’s Revenue and Customs, to bring them up to date so far as possible.

(6) Condition C is that either—

(1) 1998 c. 36. Paragraphs 51A to 51G were inserted by section 100 of, and paragraphs 12 to 14 of Schedule 52 to, the Finance Act 2009 with effect in relation to claims made on or after 1st April 2010.

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- (a) the person has not relied on this paragraph on a previous occasion (whether or not in respect of the same determination), or
 - (b) the person has done so, but in the exceptional circumstances of the case should be allowed to do so again on the present occasion.
- (7) For the purposes of sub-paragraph (6)—
- (a) a person has relied on this paragraph on a previous occasion if the person has made a claim (or a composite set of claims involving one or more determinations and accounting periods) in reliance on this paragraph on a previous occasion, and
 - (b) it does not matter whether that claim (or set of claims) succeeded.
- (8) A claim made in reliance on this paragraph must include (in addition to anything required by Schedule 1A to the Taxes Management Act 1970) such information and documentation as is reasonably required for the purpose of determining whether conditions A, B and C are met.”.