

Restitutory Remedies in Tax: Law, limits & Procedure¹

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1. Introduction

Lord Goff of Chieveley in *Woolwich Equitable Building Society v Inland Revenue Commissioners* [1993] AC 70:

“...the retention by the state of taxes unlawfully exacted is particularly obnoxious, because it is one of the most fundamental principles of our law – enshrined in a famous constitutional document, the Bill of Rights 1688 – that taxes should not be levied without the authority of Parliament; and full effect can only be given to that principle if the return of taxes exacted under an unlawful demand can be enforced as a matter of right.”

2. Two types of claim

Helpful to conceptualise as:

- (a) “Woolwich” claims, after *Woolwich Equitable Building Society v Inland Revenue Commissioners*.
- (b) Mistake of Law claims.

3. Woolwich claims

(a) Background

The Woolwich Building Society paid three instalments of tax amounting to £56,998,221 to the Revenue under the Income Tax (Building Societies) Regulations 1986 and Schedule 20 Finance Act

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1972 without prejudice to the right to recover the tax in the event of a successful challenge to the validity of the Regulations by way of judicial review proceedings.

Woolwich wished to avoid the damage to its reputation of any collection proceedings following a refusal to pay tax, and also to avoid liability to interest or penalties. Subsequently Woolwich applied for JR and Nolan J., granting the application, held that the Regulations were ultra vires and void to the extent that they purported to impose a tax liability on building societies in respect of dividends and interest paid before 6 April 1986, upheld by the House of Lords (63 TC 589).

Woolwich had issued a writ for recovery of the £56,998,221 together with interest under s 35A of the Supreme Court Act 1981 from the respective dates of payment of each instalment. After the judicial review decision, negotiations took place which resulted in repayment of the £56,998,221 but with interest only from the date of the decision. The writ action continued only in respect of Woolwich's claim for interest for the periods from the respective dates of payment of each instalment to the date of the decision.

Held, in the House of Lords: money paid by a citizen to a public authority in the form of taxes or other levies paid pursuant to an ultra vires demand by the authority is prima facie recoverable by the citizen as of right.

See Lord Slynn of Hadley at [1993] AC 70 at 201

See Lord Goff of Chieveley at 102:

(b) What is a “demand for tax”?

See, first: *NEC Semi-Conductors Ltd and others v Revenue and Customs Commissioners* [2006] EWCA Civ 25 per Mummery LJ at [44] and following.

See, secondly: *Test Claimants in the FII Group Litigation v Revenue and Customs Comrs (formerly Inland Revenue Comrs)* [2012] UKSC 19 at [76] and following.

It now appears to be settled law that you do not need “a demand” in any strict sense for a Woolwich claim.

Observed in SC in FII litigation re NEC case:

“(through counsel, most of whom have appeared on this appeal) made submissions on the Woolwich issue to the contrary effect, in each case, to those they have made on this appeal.

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These tactical shifts have occurred because, naturally enough, each side wants to win, by any proper line of argument, because of the very large sums of money at stake.”

4. Mistake of law claims - background

The House of Lords had held in *Kleinwort Benson Limited v Lincoln City Council* [1999] 2 AC 349 that claims could be made for restitution of payments made under mistake of law.

It is now confirmed that this common law remedy of restitution for payments made under a mistake of law applies to payments of tax just as it applies to other payments. See *Deutsche Morgan Grenfell Group Plc v. Commissioners of Inland Revenue* 78 TC 120:

DBAG, a German holding company, owned 14 per cent of the shares in DMG, and DBI, a wholly owned UK subsidiary of DBAG, owned the remaining 86 per cent. On 14 October 1993, 15 February 1995 and 14 January 1996, DMG paid advancement corporation tax ("ACT") in respect of dividends which it paid in July 1993, July 1994 and July 1995 respectively. Under the terms of s 247 Income and Corporation Taxes Act 1988 group income elections between DMG and DBAG and between DBI and DBAG were, apparently, precluded by reason of the limitation in the words "both being bodies corporate resident in the United Kingdom": otherwise, group income elections could have been made to enable DMG to pay dividends, and DBI to pay onward dividends, to DBAG without liability to pay ACT. On 8 March 2001, the CJEU held, in cases known as *Metallgesellschaft/Hoechst*, that the limitation in s 247(1) contravened Article 52 (now Article 49) of the EC Treaty, and that, as respects previous payments of ACT, Community Law conferred a right of compensation or restitution which aggrieved companies were entitled to pursue in the UK courts. DMG had first learned of the Hoechst litigation in mid-1995, prior to payment of the dividend in July 1995. On 13 October 2000 DMG instituted proceedings for restitution, on the footing that various dividends, and the corresponding ACT, had been paid under a mistake of law.

Held, in the House of Lords:

(1) DMG had a cause of action in restitution to recover ACT which it had paid under a mistake of law and that action was an action for "relief from the consequences of a mistake" within the meaning of s 32(1)(c) of the Limitation Act 1980;

(2) Parliament did not intend to exclude a common law remedy in all cases of mistake (whether of fact or law) in which the Revenue was unjustly enriched but which did not fall within s 33 of the Taxes Management Act 1970;

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(3) it is not a defence at common law to an action for relief from the consequences of a mistake that the mistake was in accordance with a settled view of the law;

(4) DMG had paid ACT under a mistake of law;

(5) DMG did not discover and could not with reasonable diligence have discovered its mistake until the Court of Justice of the European Communities delivered its ruling in March 2001.

5. Concurrent remedy under statute

(a) Is there a concurrent remedy?

Older cases refer to section 33 TMA 1970.

Now, see schedule 1AB TMA 1970. (The legislation is set out in the appendix.)

Does Schedule 1AB work under EU law?

Particularly, principles of Equivalence & Effectiveness:

Equivalence: in summary, domestic procedural law must operate in the same way for rights derived from domestic law and their EU law equivalents.

Effectiveness: in summary, domestic procedural law must not make it excessively difficult to enforce rights derived from EU law.

(b) Monro restriction for Mistake of law claims

For Mistake of Law claims, if there is a concurrent statutory remedy, the claim is less likely to succeed.

See *Monro v HMRC* 79 TC 579, per the Chancellor at first instance
and per Longmore LJ on appeal.

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(c) Does Monroe apply to Woolwich claims?

See *Deutsche Morgan Grenfell Group Plc v Inland Revenue Commissioners* per Lord Walker of Gestingthorpe.

(d) Does Monroe apply where the “mistake of law” arises as a result of conflict between a UK statute and EU law?

If conforming interpretation?

If EU law disapplies UK taxing statute?

6. Areas of possible challenge under EU law

(a) TOAA code: *Fisher* [2012] UKFTT 335

(b) Section 13 TCGA: *Commission v UK* C-112/14

(c) Cases in relation to other member states’ tax provisions re exit charges/group structuring:

(i) *Hughes de Lasteyrie du Salliant* C-9/01: French resident ceased to be French tax resident and became Belgian tax resident. Deemed disposal on French company shares under French tax code. Held restriction on freedom of establishment. Deferral was possible under French law, but too burdensome.

(ii) *NV Inspecteur van de Belastingdienst Oost* C-470/04: Dutch resident moved to the UK. Deemed disposal of Netherlands Antilles company shares. Held restriction on freedom of establishment. Deferral was possible under Dutch law but too burdensome.

(iii) *X Holding BV* C-337/08: Held that Dutch rules which do not permit subsidiaries in other member states from being taken into account for various group reliefs were a restriction but were justifiable and proportionate.

7. Procedure

Part 7 claim or Part 8 claim.

Depends on specific circumstances.

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See CPR Rule 8.1:

“8.1

(1) The Part 8 procedure is the procedure set out in this Part.

(2) A claimant may use the Part 8 procedure where –

(a) he seeks the court’s decision on a question which is unlikely to involve a substantial dispute of fact;”

Part 7 claim form containing particulars of claim & statement of truth. (Form N1.)

Part 8 claim form containing the question for the court to decide/the remedy sought. (Form N208.)
Also, supporting written evidence.

Served on HMRC in accordance with Rule 7.5 CPR. (Applicable also to Part 8: see Practice Direction 8A.)

County Court or High Court: latter under Part 7 if proceedings for over £100,000. (See Practice Direction 7A CPR).

8. Group Litigation

Part 19 of the CPR provides the rules for "Parties and Group Litigation". Rule 19.11 provides:

“(1) The court may make a GLO where there are or are likely to be a number of claims giving rise to the GLO issues. (CPR Practice Direction 19B provides the procedure for applying for a GLO)”

Rule 19.12 provides for the effect of a GLO:

“(1) Where a judgment or order is given or made in a claim on the group register in relation to one or more GLO issues—

(a) that judgment or order is binding on the parties to all other claims that are on the group register at the time the judgment is given or the order is made unless the court orders otherwise; and

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(b) the court may give directions as to the extent to which that judgment or order is binding on the parties to any claim which is subsequently entered on the group register.”

Procedure for applying for GLOs set out in Practice Direction 19B. Necessary to consider if e.g. a lead case/consolidated cases are more appropriate. This will depend specifics, e.g. on proximity of facts.

Claim forms need to be issued within time by all prospective claimants under the GLO.

9. Time limits

(a) Woolwich claims

Standard 6 year time limit (from payment of tax) under the Limitation Act 1980.

(b) Mistake of law claims

Section 32 Limitation Act 1980 provides:

“32 Postponement of limitation period in case of fraud, concealment or mistake.

(1) Subject to subsection (3) subsections (3) and (4A) below, where in the case of any action for which a period of limitation is prescribed by this Act, either—

(a) the action is based upon the fraud of the defendant; or

(b) any fact relevant to the plaintiff’s right of action has been deliberately concealed from him by the defendant; or

(c) the action is for relief from the consequences of a mistake;

the period of limitation shall not begin to run until the plaintiff has discovered the fraud, concealment or mistake (as the case may be) or could with reasonable diligence have discovered it.”

This appears to extend the limitation period so that it does not begin until the mistake was discovered/could have been discovered with reasonable diligence.

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Following the *Deutsche Morgan Grenfell* decision, sections 320 and 321 Finance Act 2004 were introduced:

“320 Exclusion of extended limitation period in England, Wales and Northern Ireland

(1) **Section 32(1)(c) of the Limitation Act 1980** (c. 58) or, in Northern Ireland, Article 71(1)(c) of the Limitation (Northern Ireland) Order 1989 (S.I. 1989/1339 (N.I. 11)) (extended period for bringing an action in case of mistake) **does not apply in relation to a mistake of law relating to a taxation matter under the care and management of the Commissioners of Inland Revenue.** This subsection has effect in relation to actions brought on or after 8th September 2003.

...”

The scope of this restriction was then widened by section 107 Finance Act 2007:

“107 Limitation period in old actions for mistake of law relating to direct tax

(1) Section 32(1)(c) of the Limitation Act 1980 (c. 58) (extended period for bringing action in case of mistake) does not apply in relation to any action brought **before 8th September 2003 for relief from the consequences of a mistake of law relating to a taxation matter under the care and management of the Commissioners of Inland Revenue.**

(2) Subsection (1) has effect regardless of how the grounds on which the action was brought were expressed and of whether it was also brought otherwise than for such relief.”

The CJEU ruled on this in case C-640/13 (*European Commission v UK*):

“In the light of the foregoing, it must accordingly be held that, by adopting a provision, such as section 107 of the Finance Act 2007, which curtailed, retroactively and without notice or transitional arrangements, the right of taxpayers to recover taxes levied in breach of EU law, the United Kingdom has failed to comply with its obligations under Article 4(3) TEU.”

Section 299 Finance Act 2014 was then passed in an attempt to deal with this point:

“299 Removal of limitation period restriction for EU cases

(1) In section 107 of FA 2007 (limitation period in old actions for mistake of law relating to direct tax), after subsection (5) insert—

“(5A) Subsection (1) also does not have effect in relation to an action, or so much of an action as relates to a cause of action, if the consequences of a mistake of law to

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which the action, or cause of action, relates is the charging of tax contrary to EU law.”

(2)The amendment made by this section has effect in relation to actions brought, and causes of action arising, before, on or after the day on which this Act is passed.”

So, limitation period is six years from date of payment except for periods prior to 2003 in respect of which years, we must then ask whether a cause of action relates to the charging of tax contrary to EU law.

10. Interest Rates

(a) Simple/compound interest

Sempra Metals Ltd (formerly Metallgesellschaft Ltd) v Inland Revenue Commissioners and another [2007] STC 1559

Payer is entitled to a remedy for the loss of use of that money. Such a remedy requires the payment of interest at a commercial rate and that the interest be compounded.

The VIC GLO order

VAT Interest Cars (“VIC”) Group Litigation: the issue was whether businesses which had overpaid VAT over periods of many years were entitled to recover from HMRC not only the tax which they had overpaid with simple interest on it pursuant to VATA 1994 s 78, but also compound interest. In a test case, the High Court found that, whilst the VATA 1994 s 78 provided for the payment of simple interest and excluded any other remedy as a matter of domestic law, it was nevertheless overridden, where an overpayment is caused by breach of directly effective provisions of Community law, by the principle of effectiveness:

However, the the claims for the recovery of such interest were time-barred under the Limitation Act 1980.

John Wilkins (Motor Engineers) Ltd and others v Revenue and Customs Commissioners [2009] UKUT 175 (TCC)

In the Court of Appeal, however, it was held that relevant decision was not that which resulted in HMRC paying simple interest, but the subsequent decision rejecting the claims for compound interest. The appeals were therefore not time-barred. The appeal on the substantive matter of

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compound interest was heard subsequently, the Court ruling that the case should be stayed pending the ECJ's judgment in the case of Littlewoods (see below).

Littlewoods Retail Ltd and others v HMRC (Case C-591/10, ECJ), [2014] EWHC 868 (Ch).

“European Union law must be interpreted as requiring that a taxable person who has overpaid value added tax which was collected by the Member State contrary to the requirements of European Union legislation on value added tax has a right to reimbursement of the tax collected in breach of European Union law and to the payment of interest on the amount of the latter. It is for national law to determine, in compliance with the principles of effectiveness and equivalence, whether the principal sum must bear 'simple interest', 'compound interest' or another type of interest.”

The Littlewoods decision in the ECJ returned to the High Court, which delivered judgment in March 2014. It upheld Littlewoods' (and other claimants') claim in full, the amount of compound interest amounting to over £1.2 billion. As a matter of EU law, such an indemnity required the payment to the claimants of an amount of interest which was broadly commensurate with the loss of use value of the overpaid tax, running from the dates of payment of the tax until the dates when the loss of use value was fully restored to them; as a matter of English law, the correct approach to quantification of the claims was to ascertain the objective use value of the overpaid tax, which is properly reflected in an award of compound interest; the actual benefit derived by the Government from the overpayments was irrelevant to the objective use value of the money, and even if actual benefit were the correct measure of restitution under English law, it would be precluded by EU law if the actual benefit fell short of the objective use value of the money.

HMRC have been granted permission to appeal to the Court of Appeal.

HMRC comment on this in Customs Brief 20 (2014):

“In view of the above, HMRC will apply for any claims for compound interest already lodged with the high court or county court to continue to be stayed pending the final determination of the Littlewoods litigation.

HMRC's position in relation to tribunal appeals is unchanged, namely that these should continue to be stood over until there has been a final determination as to the availability of compound interest in the United Kingdom.

Any new requests for compound interest will continue to be refused.

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HMRC will reconsider their position in the event that their appeal to the court of appeal is unsuccessful.”

(b) New or existing claims

Is a claim for compound interest a new claim, subject to the capping provisions, or is it the continuance of the original claim (ie for repayment and simple interest)? See *National Bank of Kuwait v HMRC* (2012) TC02031, TC/2011/04546, where the tribunal held that it was the former.

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APPENDIX
TMA 1970
Schedule 1AB

Recovery of Overpaid Tax etc

This Schedule inserted by FA 2009 s 100, Sch 52 para 2 with effect in relation to claims made on or after 1 April 2010.

Claim for relief for overpaid tax etc

1--

(1) This paragraph applies where--

- (a) a person has paid an amount by way of income tax or capital gains tax but the person believes that the tax was not due, or
- (b) a person has been assessed as liable to pay an amount by way of income tax or capital gains tax, or there has been a determination or direction to that effect, but the person believes that the tax is not due.

(2) The person may make a claim to the Commissioners for repayment or discharge of the amount.

(3) Paragraph 2 makes provision about cases in which the Commissioners are not liable to give effect to a claim under this Schedule.

(4) Paragraphs 3 to 7 (and sections 42 to 43C and Schedule 1A) make further provision about making and giving effect to claims under this Schedule.

(5) Paragraph 8 makes provision about the application of this Schedule to amounts paid under contract settlements.

(6) The Commissioners are not liable to give relief in respect of a case described in subparagraph (1)(a) or (b) except as provided--

- (a) by this Schedule and Schedule 1A (following a claim under this paragraph), or
- (b) by or under another provision of the Income Tax Acts or an enactment relating to the taxation of capital gains.

(7) For the purposes of this Schedule, an amount paid by one person on behalf of another is treated as paid by the other person.

Cases in which Commissioners not liable to give effect to claim

2--

(1) The Commissioners are not liable to give effect to a claim under this Schedule if or to the extent that the claim falls within a case described in this paragraph (see also paragraphs 3A and 4(5)).

(2) Case A is where the amount paid, or liable to be paid, is excessive by reason of--

(a) a mistake in a claim, election or notice,

(b) a mistake consisting of making or giving, or failing to make or give, a claim, election or notice,

(c) a mistake in allocating expenditure to a pool for the purposes of the Capital Allowances Act or a mistake consisting of making, or failing to make, such an allocation, or

(d) a mistake in bringing a disposal value into account for the purposes of that Act or a mistake consisting of bringing, or failing to bring, such a value into account.

(3) Case B is where the claimant is or will be able to seek relief by taking other steps under the Income Tax Acts or an enactment relating to the taxation of capital gains .

(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 Her Majesty's Revenue and Customs 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 section 54 (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 an appeal by the claimant relating to the amount paid, or liable to be paid, in the course of which the ground could have been put forward (a "relevant appeal") 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, and

(c) the end of the period in which the claimant was entitled to make a relevant appeal to a court or tribunal.

(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 Her Majesty's Revenue and Customs, or

(b) in accordance with an agreement between the claimant and Her Majesty's Revenue and Customs 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 income tax or capital gains tax (other than a mistake in a PAYE assessment or PAYE calculation), and

(b) liability was calculated in accordance with the practice generally prevailing at the time.

(9) Case H is where--

(a) the amount paid, or liable to be paid, is excessive by reason of a mistake in a PAYE assessment or PAYE calculation, and

(b) the assessment or calculation was made in accordance with the practice generally prevailing at the end of the period of 12 months following the tax year for which the assessment or calculation was made.

(9A) Cases G and H do not apply where the amount paid, or liable to be paid, is tax which has been charged contrary to EU law.

(9B) For the purposes of sub-paragraph (9A), 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).

(10) For the purposes of Cases G and H--

(a) "PAYE assessment" means an assessment on the claimant made in accordance with section 709 of ITEPA 2003 (assessment in connection with PAYE deductions), and

(b) "PAYE calculation" means a calculation of the amount of a deduction or repayment made or to be made under PAYE regulations in respect of tax estimated to be payable by the claimant.

Making a claim

3--

(1) A claim under this Schedule may not be made more than 4 years after the end of the relevant tax year.

(2) In relation to a claim made in reliance on paragraph 1(1)(a), the relevant tax year is--

(a) where the amount paid, or liable to be paid, is excessive by reason of a mistake in a return or returns under section 8, 8A or 12AA of this Act, the tax year to which the return (or, if more than one, the first return) relates, and

(b) otherwise, the tax year in respect of which the payment was made.

(3) In relation to a claim made in reliance on paragraph 1(1)(b), the relevant tax year is[-

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(a) where the amount liable to be paid is excessive by reason of a mistake in a return or returns under section 8, 8A or 12AA, the tax year to which the return (or, if more than one, the first return) relates, and

(b) otherwise, the tax year to which the assessment, determination or direction relates.

(4) A claim under this Schedule may not be made by being included in a return under section 8, 8A or 12AA of this Act.

(5) Sub-paragraph (1) is subject to paragraph 3A.

Determinations under section 28C: special rules

3A--

(1) This paragraph applies where--

(a) a determination has been made under section 28C of an amount that a person is liable to pay by way of income tax or capital gains 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 this Schedule but for the fact that--

(i) the claim falls within Case C (see paragraph 2(4)),

(ii) the claim falls within Case F(a) (see paragraph 2(7)(a)), or

- (iii) more than 4 years have elapsed since the end of the relevant tax year (see paragraph 3(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 this Schedule for repayment or discharge of the amount may be made, and effect given to it, despite paragraph 2(4), paragraph 2(7)(a) or paragraph 3(1), as the case may be.
- (3) But the Commissioners 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 it would be unconscionable for the Commissioners 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) are otherwise up to date or arrangements have been put in place, to the satisfaction of the Commissioners, to bring them up to date so far as possible.
- (6) Condition C is that either--
 - (a) the person has not relied on this paragraph on a previous occasion (whether in respect of the same or a different determination or tax), 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, taxes and tax years) 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) such information and documentation as is reasonably required for the purpose of determining whether conditions A, B and C are met.]¹

The claimant: one person accountable for amounts payable by another etc

4--

- (1) Sub-paragraph (2) applies where, under a relevant enactment, a person ("P") is accountable to the Commissioners for--

- (a) an amount representing income tax or capital gains tax that is or is estimated to be payable by another person ("T"), or
 - (b) any other amount that, under a relevant enactment, has been or is to be set off against a liability of T.
- (2) A claim under this Schedule in respect of the amount may be made only by T.
- (3) Sub-paragraph (4) applies where--
 - (a) a person ("P") has paid an amount described in sub-paragraph (1)(a) or (b) in the belief that P was accountable to the Commissioners for the amount under a relevant enactment, but
 - (b) P was not so accountable.
- (4) A claim under this Schedule in respect of the amount may be made only by P.
- (5) The Commissioners are not liable to give effect to a claim under sub-paragraph (4) if or to the extent that the amount has been repaid to T or set against amounts payable to the Commissioners by T.
- (6) "Relevant enactment" means--
 - (a) PAYE regulations,
 - (b) Chapter 3 of Part 3 of the Finance Act 2004 or regulations under that Chapter (construction industry scheme), or
 - (c) any other provision of or made under the Taxes Acts.]

The claimant: partnerships

5--

- (1) This paragraph applies where--
 - (a) a trade, profession or business is carried on by two or more persons in partnership,
 - (b) an amount is paid, or liable to be paid, by one or more of those persons in accordance with a self-assessment, and
 - (c) the amount is excessive by reason of a mistake in a partnership return.
- (2) A claim under this Schedule in respect of the amount--
 - (a) may be made by the relevant partner nominated to make the claim by all of the relevant partners, and
 - (b) may not be made by any other person.

(3) In relation to such a claim, references in this Schedule to the claimant are to any of the relevant partners.

(4) "Relevant partner" means--

(a) a person who was a partner in the partnership at any time during the period in respect of which the partnership return was made, or

(b) the personal representative of such a person.

Assessment of claimant in connection with claim

6--

(1) This paragraph applies where--

(a) a claim is made under this Schedule,

(b) the grounds for giving effect to the claim also provide grounds for a discovery assessment or determination on the claimant in respect of any chargeable period, and

(c) such an assessment or determination could be made but for a relevant restriction.

(2) "Discovery assessment or determination" means--

(a) an assessment under section 29(1), or

(b) a discovery assessment or discovery determination under Schedule 18 to the Finance Act 1998 (company tax return etc).

(3) The following are relevant restrictions--

(a) the conditions in section 29(3) to (5),

(b) the restrictions in paragraphs 42 to 45 of Schedule 18 to the Finance Act 1998, and

(c) the expiry of a time limit for making a discovery assessment or determination.

(4) Where this paragraph applies--

(a) the relevant restrictions are to be disregarded, and

(b) the discovery assessment or determination is not out of time if it is made before the final determination of the claim.

Amendment of partnership return etc in connection with claim

7--

(1) This paragraph applies where--

- (a) a claim is made under this Schedule,
 - (b) the claimant is one of two or more persons carrying on a trade, profession or business in partnership,
 - (c) the grounds for giving effect to the claim also provide grounds for amending, under section 30B(1) (discovery of loss of tax from partnership), a return made by the partnership or any of the partners in respect of any period, and
 - (d) such an amendment could be made but for a relevant restriction.
- (2) The following are relevant restrictions--
- (a) the conditions in section 30B(4) to (6), and
 - (b) the expiry of a time limit for making an assessment under that section.
- (3) Where this paragraph applies--
- (a) the relevant conditions are to be disregarded, and
 - (b) the amendment is not out of time if it is made before the final determination of the claim.

Contract settlements

8--

- (1) In paragraph 1(1)(a), the reference to an amount paid by way of income tax or capital gains tax includes an amount paid under a contract settlement in connection with income tax or capital gains tax believed to be due from any person.
- (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 this Schedule in respect of that amount--
- (a) the references to the claimant in paragraph 2(5) to (7) (Cases D, E and F) have effect as if they included the taxpayer,
 - (b) the references to the claimant in paragraph 2(8) and (10) (Cases G and H) have effect as if they were references to the taxpayer,
 - (c) the references to the claimant in paragraphs 6(1)(b) and 7(1)(b) have effect as if they were references to the taxpayer, and
 - (d) references to tax in Schedule 1A (as it applies to a claim under this Schedule) include such an amount.

(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 or determination on the taxpayer in respect of any chargeable period.

(5) The Commissioners may set any amount repayable to the payer by virtue of the claim against any amount payable by the taxpayer by virtue of the assessment or determination.

(6) The obligations of the Commissioners and the taxpayer are discharged to the extent of any set-off under sub-paragraph (5).

(7) In this paragraph--

"contract settlement" means an agreement made in connection with any person's liability to make a payment to the Commissioners under or by virtue of an enactment;

"discovery assessment or determination" has the same meaning as in paragraph 6.]

Interpretation

9--

(1) In this Schedule "the Commissioners" means the Commissioners for Her Majesty's Revenue and Customs.

(2) For the purposes of this Schedule, 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).