

Overpayment relief: limiting the effect of prevailing practice and timing of loss mistakes

Who is likely to be affected?

Taxpayers claiming overpayment relief where tax overpaid has been levied contrary to EU law or where losses have been understated.

General description of the measure

This measure amends legislation to confirm that where tax was levied contrary to EU law, overpayment relief will not be affected by any prevailing practice. It also amends the four year time limit for overpayment relief claims to make clear that the four years run from the period to which the mistake relates.

Policy objective

The policy objective is to ensure that overpayment relief is fully compliant with EU law so that persons who have paid tax levied contrary to EU law know they must apply for relief through an overpayment relief claim. The measure also makes clear that all claims to overpayment relief arising from a mistake in a return run from the period in which the mistake in a return arose.

Background to the measure

This measure puts in statute the treatment of overpayment relief claims for tax levied contrary to EU law that was previously set out in Revenue & Customs Brief 22/10. The second part of the measure clarifies the claims period for overpayment relief.

Detailed proposal

Operative date

These changes will have effect for claims received on and after the end of the six month period following Royal Assent to Finance Bill 2013

Current law

This measure affects the overpayment relief provisions in Schedule 1AB to Taxes Management Act 1970 (TMA) (income and capital gains tax), Schedule 18 to Finance Act 1998 (FA 1998) (corporation tax), Schedule 2 to Oil Taxation Act 1975 (OTA 1975) (petroleum revenue tax) and Schedule 10 to Finance Act 2003 (FA 2003) (stamp duty land tax). These provisions allow repayments or reductions in assessments if taxpayers have overpaid or been over assessed to direct tax.

Proposed revisions

Legislation will be introduced in Finance Bill 2013 to remove the restriction for claims where the overpaid or over assessed tax has been paid in accordance with the practice generally prevailing for claims where the tax has been levied contrary to EU law. For claims to overpayment of income tax, capital gains tax, corporation tax and petroleum revenue tax the time limits for claims where a person has been assessed as liable to pay an amount of tax will run from the period to which the return containing the mistake relates.

Summary of impacts

Exchequer impact (£m)	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18
	-	nil	nil	nil	nil	nil
	This measure is not expected to have an Exchequer impact. This measure supports the Exchequer in its commitment to protect revenue.					
Economic impact	This measure is not expected to have any significant economic impacts.					
Impact on individuals and households	This measure amends the legislation in line with published guidance and what we consider to be current practice. Accordingly this measure is not expected to have any significant impact on individuals or households.					
Equalities impacts	No equalities impacts are expected.					
Impact on business including civil society organisations	This measure amends the legislation in line with published guidance and what we consider to be current practice. We expect a small number of businesses could be affected by the time limit measure which could reduce claims for over assessed tax. However, the overall impact on business or civil society organisations is not expected to be significant.					
Operational impact (£m) (HMRC or other)	Operational impacts are considered to be negligible and may allow scope for some small administrative saving.					
Other impacts	<p><u>Small firms impact test</u>: there will be a negligible impact on businesses, some of which will be small firms.</p> <p>Other impacts have been considered and none have been identified.</p>					

Monitoring and evaluation

The measure will be monitored as relevant litigation clarifies the likely risks.

Further advice

If you have any questions about this change, please contact Adrian Wilsdon on 020 7147 2359 (email: adrian.wilsdon@hmrc.gsi.gov.uk) or Nick Mosley on 03000 572 490 (email: nick.mosley@hmrc.gsi.gov.uk).

1 Overpayment relief: generally prevailing practice exclusion and EU law

- (1) In Schedule 1AB to TMA 1970 (recovery of overpaid tax etc), in paragraph 2 (cases in which Commissioners not liable to give effect to claim), after sub-paragraph (9) insert—
 - “(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).”
- (2) In Schedule 2 to the Oil Taxation Act 1975 (management and collection of petroleum revenue tax), in paragraph 13B (claim for relief for overpaid tax etc: cases in which HMRC not liable to give effect to a claim), after sub-paragraph (8) insert—
 - “(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).”
- (3) In Part 6 of Schedule 18 to FA 1998 (overpaid tax, excessive assessments or repayments etc), in paragraph 51A (cases in which Commissioners not liable to give effect to a claim), after sub-paragraph (8) insert—
 - “(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).”
- (4) In Part 6 of Schedule 10 to FA 2003 (relief in case of overpaid tax or excessive assessment), in paragraph 34A (cases in which Commissioners not liable to give effect to a claim), after sub-paragraph (8) insert –
 - “(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).”
- (5) The amendments made by this section have effect in relation to any claim (in respect of overpaid tax, excessive assessment etc) made after the end of the six month period beginning with the day on which this Act is passed.

2 Overpayment relief: time limit for claims

- (1) In Schedule 1AB to TMA 1970 (recovery of overpaid tax etc), in paragraph 3 (making a claim), in sub-paragraph (3) after “the relevant tax year is” insert “–
 - (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,”.
- (2) In Schedule 2 to the Oil Taxation Act 1975, in paragraph 13C (claim for relief for overpaid tax etc: making a claim), in sub-paragraph (3) after “the relevant chargeable period is” insert “–
 - (a) where the amount liable to be paid is excessive by reason of a mistake in a return or returns under paragraph 2 or 5, the chargeable period to which the return (or, if more than one, the first return) relates, and
 - (b) otherwise,”.
- (3) In Part 6 of Schedule 18 to FA 1998 (overpaid tax, excessive assessments or repayments, etc), in paragraph 51B (making a claim), in sub-paragraph (3), after “the relevant accounting period is” insert “–
 - (a) where the amount liable to be paid is excessive by reason of a mistake in a company tax return or returns, the accounting period to which the return (or, if more than one, the first return) relates, and
 - (b) otherwise,”.
- (4) The amendments made by this section have effect in relation to any claim (in respect of overpaid tax, excessive assessment etc) made after the end of the six month period beginning with the day on which this Act is passed.

EXPLANATORY NOTE

**OVERPAYMENT RELIEF: GENERALLY PREVAILING PRACTICE
EXCLUSION AND EU LAW**

SUMMARY

1. This clause 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 CLAUSE

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 Bill.

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 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 clause resolves.
13. The changes made by this clause 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.
14. If you have any questions about this change, or comments on the legislation, please contact Adrian Wilsdon on 020 7147 2359 (email: adrian.wilsdon@hmrc.gsi.gov.uk).

EXPLANATORY NOTE

OVERPAYMENT RELIEF: TIME LIMITS FOR CLAIMS

SUMMARY

1. This clause ensures that the time limit for claims to relief for tax which has been over assessed as a result of a mistake in a return runs from the tax year or chargeable period to which the mistake relates.

DETAILS OF THE CLAUSE

2. Subsection (1) amends the overpayment relief provision for income tax and capital gains tax in Schedule 1AB to TMA 1970. Paragraph 3 of that Schedule provides that claims to relief must be made within four years of the end of the “relevant tax year”. In the case of claims to relief where a person has been assessed as liable to pay an amount which is not due as a result of a mistake in a return this subsection provides that the relevant tax year is the tax year to which the return relates.
3. Subsections (2) to (3) make similar amendments to the overpayment relief provisions for petroleum revenue tax and corporation tax.
4. Subsection (4) provides that the amendments will have effect for claims made six months or more after Royal Assent to the Finance Bill.

BACKGROUND

5. The four 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. (The stamp duty land tax provision is not affected by this amendment.) Overpayment or over assessment may arise from a mistake in a return or for other reasons.
6. A four year time limit for claims to the relief runs from the end of “the relevant tax year”, “relevant accounting period” or “relevant chargeable period”. If tax has been overpaid the relevant tax year, etc is that to which the return relates and otherwise it is the tax year in respect of which the payment was made. If a person is liable to tax as a result of an assessment, determination or direction there is no separate provision for claims resulting from a mistake in a return.

FINANCE BILL

Instead there is only one rule for the relevant tax year, etc and that is the year to which the assessment, determination or direction relates.

7. The clause corrects this and ensures that the time limit runs in all cases from the year or period to which the return in respect of which the mistake was made relates.
8. If you have any questions about this change, or comments on the legislation, please contact Adrian Wilsdon on 020 7147 2359 (email: adrian.wilsdon@hmrc.gsi.gov.uk).