

NOTICES OF AMENDMENTS

given on

Wednesday 26 June 2013

*For other Amendment(s) see the following page(s) of Supplement to Votes:
387-88 and 389*

CONSIDERATION OF BILL

FINANCE BILL, AS AMENDED

Restrictions on interim payments in proceedings relating to taxation matters

Mr Chancellor of the Exchequer

NC7

To move the following Clause:—

- (1) This section applies to an application for an interim remedy (however described), made in any court proceedings relating to a taxation matter, if the application is founded (wholly or in part) on a point of law which has yet to be finally determined in the proceedings.
- (2) Any power of a court to grant an interim remedy (however described) requiring the Commissioners for Her Majesty's Revenue and Customs, or an officer of Revenue and Customs, to pay any sum to any claimant (however described) in the proceedings is restricted as follows.
- (3) The court may grant the interim remedy only if it is shown to the satisfaction of the court—
 - (a) that, taking account of all sources of funding (including borrowing) reasonably likely to be available to fund the proceedings, the payment of the sum is necessary to enable the proceedings to continue, or
 - (b) that the circumstances of the claimant are exceptional and such that the granting of the remedy is necessary in the interests of justice.
- (4) The powers restricted by this section include (for example)—
 - (a) powers under rule 25 of the Civil Procedure Rules 1998 (S.I. 1998/3132);
 - (b) powers under Part II of Rule 29 of the Rules of the Court of Judicature (Northern Ireland) (Revision) 1980 (S.R. 1980 No.346).
- (5) This section applies in relation to proceedings whenever commenced, but only in relation to applications made in those proceedings on or after 26 June 2013.
- (6) This section applies on and after 26 June 2013.
- (7) Subsection (8) applies where, on or after 26 June 2013 but before the passing of this Act, an interim remedy was granted by a court using a power which, because of subsection (6), is to be taken to have been restricted by this section.

Finance Bill, *continued*

- (8) Unless it is shown to the satisfaction of the court that paragraph (a) or (b) of subsection (3) applied at the time the interim remedy was granted, the court must, on an application made to it under this subsection—
- (a) revoke or modify the interim remedy so as to secure compliance with this section, and
- (b) if the Commissioners have, or an officer of Revenue and Customs has, paid any sum as originally required by the interim remedy, order the repayment of the sum or any part of the sum as appropriate (with interest from the date of payment).
- (9) For the purposes of this section, proceedings on appeal are to be treated as part of the original proceedings from which the appeal lies.
- (10) In this section “taxation matter” means anything, other than national insurance contributions, the collection and management of which is the responsibility of the Commissioners for Her Majesty’s Revenue and Customs (or was the responsibility of the Commissioners of Inland Revenue or Commissioners of Customs and Excise).’
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EXPLANATORY NOTE

NEW CLAUSE 7: RESTRICTIONS ON INTERIM PAYMENTS IN PROCEEDINGS RELATING TO TAXATION MATTERS

SUMMARY

1. This clause applies to applications for interim remedies, in particular for repayments of tax, made in High Court and other court of justice proceedings relating to points of law in taxation matters. It brings the courts' discretion closer to that of statutory tax tribunals by limiting the circumstances in which applications may be granted.

DETAILS OF THE CLAUSE

2. Subsections (1), (2) and (10) set out the scope of the provision. It restricts the power of a court to require HM Revenue & Customs (HMRC) to pay any sum to a claimant (however described) by way of interim remedy (however described) made in any court proceedings relating to a taxation matter on an application founded at least in part on a point of law not yet finally decided. For this purpose taxation matter includes anything within the collection and management responsibility of the Commissioners for Revenue & Customs, other than national insurance contributions.
3. Subsection (3) sets out the new restriction. The court may grant the interim remedy only if (a) payment of the sum is necessary to enable the proceedings to continue, or (b) the claimant's circumstances are exceptional and such that grant of remedy is necessary in the interests of justice. For the purposes of (a) above, all sources of funding reasonably likely to be available, including borrowing capacity of the claimant, are taken into account.
4. The powers of the court affected by the clause are those set out in its procedural rules. Subsection (4) gives examples of these.
5. Subsections (5) to (8) deal with commencement matters. The clause applies on or after 26 June 2013 in relation to proceedings whenever they were commenced. If any remedy is granted by a court between 26 June 2013 and Royal Assent, provision is made to oblige the court to revoke or modify any remedy so as to give effect to the restriction and to order recovery of any related payment made by HMRC.
6. Subsection (9) makes clear that proceedings on appeal are treated for the purposes of the clause as part of the original proceedings from which the appeal lies.

BACKGROUND

7. There are currently several examples of long running tax litigation which, because of particular circumstances, are subject to procedural rules of the court rather than the statutory rules which normally apply to tax litigation.
8. The clause brings the rules relating to interim repayments in these cases more closely into line with statutory rules which normally apply to tax litigation.

Restrictions on interim payments in proceedings relating to taxation matters

Who is likely to be affected?

Claimants under proceedings relating to a taxation matter which were originally brought before the High Court (or, in Scotland, the Court of Session) rather than on appeal to the Tax Tribunal.

General description of the measure

The measure will restrict the power of a court to grant an interim remedy, normally repayment of tax, on an application by a claimant which is founded at least in part on a point of law which has yet to be finally determined.

Policy objective

The measure will bring the interim remedies available to a claimant under proceedings which originated in a claim made to the High Court (or, in Scotland, the Court of Session) relating to a taxation matter more closely into line with those available under the more usual route of appeal under the Taxes Acts. This will simplify the process and avoid work on complex calculations on a contingent basis before the taxpayer's right to a repayment of tax has been decided by a court.

Background to the measure

This is a new measure of procedural character which is not within the scope of consultation. It will not affect the substantive rights of claimants but merely their ability to obtain repayments of tax on an interim basis, pending eventual resolution of issues before the courts.

Detailed proposal

Operative date

The measure will have effect on and after 26 June 2013, the date it was introduced as a new clause in the Finance Bill, to remedies made on proceedings whenever they were commenced. If any interim remedy is granted by a court between 26 June 2013 and the date Finance Bill 2013 receives Royal Assent, the court will be obliged to revoke or modify the remedy and order recovery of any related payment made by HM Revenue & Customs (HMRC).

Current law

Normally litigation relating to taxation matters originates in appeals under the Taxes Acts to the Tax Tribunals and potentially on to the Court of Appeal (in Scotland, Court of Session) and the Supreme Court. There is in such litigation no power to award interim relief by way of tax repayments. Payment and repayment of tax depends on the substantive decision of a tribunal or court. By contrast, in proceedings originated before the High Court, or in Scotland the Court of Session, the court has power to award an interim remedy such as repayment of tax, as for example under rule 25 of the Civil Procedure Rules, SI 1998/3132.

Proposed revisions

Legislation will be introduced in Finance Bill 2013 to restrict a court's power to grant an interim remedy such as repayment of tax. It will be able to do so only if the claimant is dependent on the repayment to fund continuation of the proceedings, or the claimant's circumstances are exceptional and such that the remedy is needed in the interests of justice.

Summary of impacts

Exchequer impact (£m)	2013-14	2014-15	2015-16	2016-17	2017-18
		Nil	Nil	Nil	Nil
	The measure has no Exchequer impact as the changes will impact on future costs to HMRC not currently included within forecasts.				
Economic impact	The impact of the measure can be expected to be limited (in any one instance) to a relatively small number of companies or groups of companies involved in litigation with HMRC. Generally these will not be limited to a particular sector or type of company. As such economic effects are expected to be minimal.				
Impact on individuals and households	There will be no anticipated impact on individuals and households.				
Equalities impacts	There will be no equalities impact.				
Impact on business including civil society organisations	A small number of claimants whose proceedings relating to a taxation matter were, exceptionally, originated before the High Court or Court of Session rather than by appeal to the Tax Tribunal will not receive interim repayments to which they might otherwise have been granted. There will be benefit in reduced administrative work preparing interim claims.				
Operational impact (£m) (HMRC or other)	There will be benefit in reduced administrative work checking and auditing claims.				
Other impacts	Other impacts have been considered and none have been identified.				

Monitoring and evaluation

This measure brings the treatment of taxation related claims to the courts more closely into line with normal Taxes Act claims and it is considered that monitoring and evaluation are not required.

Further advice

If you have any questions about this change, please contact Victor Baker on 020 7147 2616 (email: victor.j.baker@hmrc.gsi.gov.uk).

Declaration

David Gauke MP, Exchequer Secretary to the Treasury, has read this Tax Information and Impact Note and is satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impacts of the measure.