

Treasury  
Customs and Excise Division

Notice 1002 MAN

Annex B

General Application



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**Isle of Man**  
Government

*Reilts Ellan Vannin*

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**Isle of Man**  
**Government**

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## Provisional Collection of Taxes Act 1968

### Customs and excise: provisions for securing duties under resolutions not having statutory effect

3. (1) The following provisions of this section shall have effect where Tynwald passes a resolution providing for the imposition as from a specified date of any duty of customs or excise, and providing that this section shall apply in relation to that resolution.

(2) If the duty so imposed is a duty of customs, the Finance Board may require any person who, on or after the specified date, imports or clears from warehouse any goods to which the resolution applies to give security that he will, if and when an order under section 2 of the Customs and Excise (Isle of Man) Act 1958 (an Act of Tynwald) giving effect to the resolution comes into operation, pay the duty chargeable in respect of the goods under that order.

(3) If it is a duty of excise, any regulations made by the Finance Board under this subsection, as it has effect in England and Wales, shall, subject to such exemptions, adaptations and modifications (if any) as may be specified in an order made by the Finance Board of the Isle of Man, having effect in the Isle of Man as they have effect in England and Wales; and any such order may be made retrospective and be deemed to have come into operation from such day as may be specified in the order, not being earlier than the day on which the regulations came into force in England and Wales.

(4) If any person contravenes or fails to comply with regulations made under this section, he shall be liable to a penalty of £50, and any goods in respect of which the offence was committed shall be liable to forfeiture.

(4A) In this Section –

- (a) “duty of customs” includes a duty of excise on goods imported or removed without payment of duty into the Isle of Man; and
- (b) “duty of excise”, except in paragraph (a) above, does not include a duty of excise on goods imported or removed without payment of duty into the Isle of Man.

(5) This section shall be construed as one with the Customs and Excise Management Act 1979.

## Finance Act 1977 (c.36)

### Duties or levies on goods passing into free circulation etc.

10. (1) In any case where –
- (a) goods which are not for the time being in free circulation in member States are imported into the United Kingdom from another member State, and
  - (b) in accordance with the Treaties the goods either are allowed to be put on the market in the United Kingdom or to be destroyed or otherwise cease to be subject to special arrangements involving the suspension of, or the giving of relief from, duties or levies in another member State,

then, in such circumstances as may be prescribed, duties of customs or levies shall be charged on or in respect of the goods by virtue of this section.

(2) Any question whether goods are at any time in free circulation in member States shall be determined in accordance with the Treaties.

(3) The amount of the duty of customs or levy which, in any particular prescribed circumstances, is charged on or in respect of any goods by virtue of this section shall be such as, in accordance with the Treaties, may either be prescribed or determined in a prescribed manner.

(4) Duties of customs charged by virtue of this section shall be treated as Community customs duties charged under subsection (1) of section 5 of the European Communities Act 1972 and levies charged by virtue of this section shall be treated as agricultural levies, as defined in subsection (8) of section 6 of that Act; and the provisions of, and of the enactments referred to in, the said section 6 shall apply accordingly.

(5) In this section “prescribed” means prescribed by regulations made under this section.

(6) This section and, except in so far as any such regulations otherwise provide, any regulations made under it shall have effect in relation to goods imported into the United Kingdom on or after 1<sup>st</sup> July 1977.

### Recovery of duty etc. due in other member States

11. (1) This section applies where, in accordance with the Directive of the Council of the European Communities dated 15<sup>th</sup> March 1976 No. 76/308/EEC, an authority in a member State makes a request for the recovery in the United Kingdom of any sum claimed by that authority in that State.

(2) Subject to the following provisions, where this section applies the Attorney General or the Treasurer of the Isle of Man may recover the sum specified in the request as if it were a debt due to the Crown.

(3) Proceedings for the recovery of any sum under this section shall be stayed if the defendant satisfies the court that proceedings relevant to his liability on the claim in relation to which the request has been made are pending, or are about to be instituted before a court, tribunal or other competent body in the member State in question; but any such stay may be removed if the proceedings in the member State are not prosecuted or instituted with reasonable expedition.

(4) It shall be a defence to proceedings under this section for that defendant to show that a final decision on the claim has been given in his favour by a court, tribunal or other competent body

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in the member State in question; and if he shows that such a decision has been given in respect of part of the claim it shall be a defence to the proceedings in so far as they relate to that part.

(5) For the purposes of subsection (3) above proceedings shall be regarded as pending so long as an appeal may be brought against any decision in the proceedings; and for the purposes of subsection (4) above a final decision is one against which no appeal lies or against which an appeal lies within a period which has expired without an appeal having been brought.

(6) In proceedings under this section any averment in the pleadings that a request has been made as mentioned in subsection (1) above for the recovery of the sum which is the subject of the proceedings shall be conclusive evidence of that fact; and except as provided in subsection (4) above no question shall be raised in any such proceedings as to the defendant's liability on the claim in relation to which the request has been made.

(7) ...Omitted.

(8) ...Omitted.

### **Interpretation of sections 10 and 11**

11A. In sections 10 and 11 above, "agricultural levies", "Commissioners", "Community Customs duty", "member State" and "the Treaties" have the same meanings as in the European Communities (Isle of Man) Act 1973 (an Act of Tynwald).

PART VII

MISCELLANEOUS AND SUPPLEMENTAL

Miscellaneous: indirect taxation

**Setting of rates of interest**

197. (1) The rates of interest applicable for the purposes of an enactment to which this section applies shall be the rate which for the purposes of that enactment is provided for by regulations made by the Treasury under this section.

(2) This section applies to –

- (a) paragraphs 7 and 8(1) of Schedule 6 to the Finance Act 1994 as it has effect in the Island, (interest payable to the Treasury in connection with air passenger duty);
- (b) ...omitted
- (c) ...omitted
- (d) ...omitted
- (e) paragraph 17 of Schedule 5 to the Finance Act 1997 (interest on amounts repayable in respect of overpayments by the Treasury in connection with excise duties);
- (f) sections 126 and 127 of the Finance Act 1999 (interest on overdue customs duty and on repayments of amounts paid by way of customs duty);
- (g) ...omitted
- (h) ...omitted
- (i) Parts II and III of Schedule 3 to the Finance Act 2001, as it has effect in the Island, (interest payable on repayments etc.).

(3) Regulations under this section may –

- (a) make different provisions for purposes of the same enactment,
- (b) either themselves specify a rate of interest for the purpose of an enactment or make provision for any such rate to be determined, and to change from time to time, by reference to such rate or the average of such rates as may be referred to in the regulations,
- (c) provide for rates to be reduced below, or increased above, what they otherwise would be by specified amounts or by reference to specified formulae,
- (d) provide for rates arrived at by reference to averages or formulae to be rounded up or down,

- (e) provide for circumstances in which changes of rates of interest are or are not to take place, and
- (f) provide that changes of rates are to have effect for periods beginning on or after a day determined in accordance with the regulations in relation to interest running from before that day, as well as in relation to interest running from, or from after, that day.

(4) Regulations under this section shall be exercisable by a public document made by the Treasury laid before Tynwald as soon as practicable after it is made, and if Tynwald at the sitting at which such public document is laid or at the next following sitting resolves that the public document shall be annulled, the public document shall thereupon cease to have effect.

(5) Where –

- (a) regulations under this section provide, without specifying the rate determined in accordance with the regulations, for a new method of determining the rate applicable for the purposes of an enactment, or
- (b) the rate which, in accordance with regulations under this section, is the rate applicable for the purposes of an enactment changes otherwise than by virtue of the making of regulations specifying a new rate,

the Treasury shall make an order specifying the new rate and the day from which, in accordance with the regulations, it has effect.

(6) The words “the rate applicable under section 197 of the Finance Act 1996” shall be substituted –

- (a) for the words “the specified rate” in each of paragraphs 7(1) and (3) and 9(1) of Schedule 6 to the Finance Act 1994 (air passenger duty);
- (b) ...omitted
- (c) ...omitted
- (d) ...omitted.

(7) Subsections (1) and (6) above shall have effect for periods beginning on or after such day as the Treasury may by order made by statutory instrument appoint and shall have effect in relation to interest running from before that day, as well as in relation to interest running from, or from after, that day; and different days may be appointed under this subsection for different purposes.

**SCHEDULE 5**

**INDIRECT TAXES: OVERPAYMENTS ETC**

**Part I**

**Unjust Enrichment**

**Application of Part I**

1. (1) This Part of this Schedule has effect for the purposes of the following provisions (which make it a defence to a claim for repayment that the repayment would unjustly enrich the claimant), namely –

- (a) section 144A(3) of the Customs and Excise Management Act 1986 (excise duties);
- (b) ...omitted;
- (c) ...omitted.

(2) Those provisions are referred to in this Part of this Schedule as unjust enrichment provisions.

(3) In this Part of this Schedule –

“relevant repayment provision” means –

- (a) section 144A of the Customs and Excise Management Act 1986 (recovery of overpaid excise duty);
- (b) ...omitted;
- (c) ...omitted;

“relevant tax” means any duty of excise; and

“subordinate legislation” has the same meaning as in the Interpretation Act 1976.

**Disregard of business losses**

2. (1) This paragraph applies where –

- (a) there is an amount paid by way of relevant tax which (apart from an unjust enrichment provision) would fall to be repaid under a relevant repayment provision to any person (“the taxpayer”), and
- (b) the whole or a part of the cost of the payment of that amount to the Treasury has, for practical purposes, been borne by a person other than the taxpayer.



(2) Where, in a case to which this paragraph applies, loss or damage has been or may be incurred by the taxpayer as a result of mistaken assumptions made in his case about the operation of any provisions relating to a relevant tax, that loss or damage shall be disregarded, except to the extent of the quantified amount, in the making of any determination –

- (a) of whether or to what extent the repayment of an amount to the taxpayer would enrich him; or
- (b) of whether or to what extent any enrichment of the taxpayer would be unjust.

(3) In sub-paragraph (2) above “the quantified amount” means the amount (if any) which is shown by the taxpayer to constitute the amount that would appropriately compensate him for loss or damage shown by him to have resulted, for any business carried on by him, from the making of the mistaken assumption.

(4) The reference in sub-paragraph (2) above to provisions relating to a relevant tax is a reference to any provisions of –

- (a) any enactment, subordinate legislation or Community legislation (whether or not still in force) which relates to that tax or to any matter connected with it; or
- (b) any notice published by the Treasury under or for the purposes of any such enactment or subordinate legislation.

(5) This paragraph has effect for the purposes of making any repayment on or after the day on which this Act is passed, even if the claim for that repayment was made before that day.

### **Reimbursement arrangements**

3. (1) The Treasury may by regulations make provision for reimbursement arrangements made by any person to be disregarded for the purposes of any or all of the unjust enrichment provisions except where the arrangements –

- (a) contain such provision as may be required by the regulations; and
- (b) are supported by such undertakings to comply with the provisions of the arrangements as may be required by the regulations to be given to the Treasury.

(2) In this paragraph “reimbursement arrangements” means any arrangements for the purposes of a claim under a relevant repayment provision which –

- (a) are made by any person for the purpose of securing that he is not unjustly enriched by the repayment of any amount in pursuance of the claim; and
- (b) provide for the reimbursement of persons who have for practical purposes borne the whole or any part of the cost of the original payment of that amount to the Treasury.

(3) Without prejudice to the generality of sub-paragraph (1) above, the provision that may be required by regulations under this paragraph to be contained in reimbursement arrangements includes –

- (a) provision requiring a reimbursement for which the arrangements provide to be made within such period after the repayment to which it relates as may be specified in the regulations;
- (b) provision for the repayment of amounts to the Treasury where those amounts are not reimbursed in accordance with the arrangements;
- (c) provision requiring interest paid by the Treasury on any amount repaid by it to be treated in the same way as that amount for the purposes of any requirement under the arrangements to make reimbursement or to repay the Treasury;
- (d) provision requiring such records relating to the carrying out of the arrangements as may be described in the regulations to be kept and produced to the Treasury, or to an officer of the Treasury.

(4) Regulations under this paragraph may impose obligations on such persons as may be specified in the regulations –

- (a) to make the repayments to the Treasury that they are required to make in pursuance of any provisions contained in any reimbursement arrangements by virtue of sub-paragraph (3)(b) or (c) above;
- (b) to comply with any requirements contained in any such arrangements by virtue of sub-paragraph (3)(d) above.

(5) Regulations under this paragraph may make provision for the form and manner in which, and the times at which, undertakings are to be given to the Treasury in accordance with the regulations; and any such provision may allow for those matters to be determined by the Treasury in accordance with the regulations.

(6) Regulations under this paragraph may –

- (a) contain any such incidental, supplementary, consequential or transitional provision as appears to the Treasury to be necessary or expedient; and
- (b) make different provision for different circumstances.

(7) Regulations under this paragraph may have effect (irrespective of when the claim for repayment was made) for the purposes of the making of any repayment by the Treasury after the time when the regulations are made; and, accordingly, such regulations may apply to arrangements made before that time.

(8) Regulations under this paragraph shall be made by statutory document subject to approval by Tynwald.

### **Contravention of requirement to repay Treasury**

4. (1) Where any obligation is imposed by regulations made by virtue of paragraph 3(4) above, a contravention or failure to comply with that obligation shall, to the extent that it relates to amounts repaid under section 144A of the Customs and Excise Management Act 1986, attract a penalty under section 9 of the Finance Act 1994 (penalties in connection with excise duties), as applied in the Island.

(2) ...Omitted.

(3) ...Omitted.

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## Part II

### Time Limits

#### Repayments

5. (1) For subsection (4) of section 144A(3) of the Customs and Excise Management Act 1986 (time limit on recovery of overpaid excise duty) there shall be substituted the following subsection –

“(4) The Treasury shall not be liable, on a claim made under this section, to repay any amount paid to it more than three years before the making of the claim.”.

(2) ...Omitted.

(3) ...Omitted.

#### Assessments

6. (1) In each of the enactments specified in subsection (2) below (which provide for the time limits applying to the making of assessments), for the words “six years”, wherever they occur, there shall be substituted the words “three years”.

(2) Those enactments are –

(a) section 12(4)(a) and (5) of the Finance Act 1994 (excise duties), as applied in the Island;

(b) ...omitted;

(c) ...omitted.

## Part III

### Interest

#### Interest on overpaid air passenger duty

7. (1) Paragraph 9 of Schedule 6 to the Finance Act 1994 (interest payable by the Treasury in connection with air passenger duty, as applied in the Island, shall have effect, and be deemed always to have had effect, with the amendments for which this paragraph provides.

(2) After sub-paragraph (1) there shall be inserted the following sub-paragraph –

“(1A) In sub-paragraph (1) above the reference to an amount which the Treasury is liable to repay in consequence of the making of a payment that was not due is a reference to only so much of that amount as is the subject of a claim that the Treasury is required to satisfy or have satisfied.”

(3) For sub-paragraph (6) (claims for interest to be made within six years of discovery of error) there shall be substituted the following sub-paragraph –

“(6) A claim under this paragraph shall not be made more than three years after the end of the applicable period to which it relates.”

(4) For sub-paragraph (7) there shall be substituted the following paragraph –

“(7) Any reference in this paragraph to the authorisation by the Treasury of the payment of any amount includes a reference to the discharge by way of set-off of the Treasury’s liability to pay that amount.”

8. (1) In sub-paragraph (2) of that paragraph (applicable period), the words after paragraph (b) shall be omitted; and the following sub-paragraphs shall be substituted for sub-paragraphs (3) and (4) –

“(2A) In determining the applicable period for the purposes of this paragraph there shall be left out of account any period by which the Treasury’s authorisation of the payment of interest is delayed by the conduct of the person who claims the interest.

(2B) The reference in sub-paragraph (2A) above to a period by which the Treasury’s authorisation of the payment of interest is delayed by the conduct of the person who claims it includes, in particular, any period which is referable to –

- (a) any unreasonable delay in the making of the claim for interest or in the making of any claim for the repayment of the amount on which interest is claimed;
- (b) any failure by that person or a person acting on his behalf or under this influence to provide the Treasury –
  - (i) at or before the time of the making of a claim, or
  - (ii) subsequently in response to a request for information by the Treasury,

with all the information required by them to enable the existence and amount of the claimant’s entitlement to a repayment, and to interest on the amount of that repayment, to be determined; and

- (c) the making, as part of or in association with either –
  - (i) the claim for interest, or
  - (ii) any claim for the payment or repayment of the amount on which interest is claimed,

of a claim to anything to which the claimant was not entitled.

(3) In determining for the purposes of sub-paragraph (2B) above whether any period of delay is referable to a failure by any person to provide information in response to a request by the Treasury, there shall be taken to be so referable, except so far as may be prescribed, any period which –

- (a) begins with the date on which the Treasury require that person to provide information which it reasonably considers relevant to the matter to be determined; and
- (b) ends with the earliest date on which it would be reasonable for the Treasury to conclude –

- (i) that it has received a complete answer to its request for information;
- (ii) that it has received all that it needs in answer to that request; or
- (iii) that it is necessary for it to be provided with any information in answer to that request.”

(2) Sub-paragraph (1) above shall have effect for the purposes of determining whether any period beginning on or after the day on which this Act is passed is left out of account.

#### **Interest on overpaid insurance premium tax**

9. ...Omitted.

10. ...Omitted.

#### **Interest on overpaid landfill tax**

11. ...Omitted.

12. ...Omitted.

### **Part IV**

#### **Set-off involving landfill tax**

13. ...Omitted.

### **Part V**

#### **Recovery of excess payments by the Treasury**

##### **Assessment for excessive repayment**

14. (1) Where –

- (a) any amount has been repaid at any time to any person by way of a repayment under a relevant repayment provision; and
- (b) the amount paid exceeded the amount which the Treasury was liable at that time to repay to that person,

the Treasury may, to the best of its judgement, assess the excess paid to that person and notify it to him.

(2) Where any person is liable to pay any amount to the Treasury in pursuance of an obligation imposed by virtue of paragraph 3(4)(a) above, the Treasury may, to the best of its judgement, assess the amount due from that person and notify it to him.

(3) In this paragraph “relevant repayment provision” means –

- (a) section 144A(3) of the Customs and Excise Management Act 1986 (recovery of overpaid excise duty);
- (b) ...omitted;

- (c) ...omitted;
- (d) Part I of Schedule 3 to the Finance Act 2001, as it has effect in the Island, (payments made and rebates disallowed in error).

### **Assessment for overpayments of interest**

15. (1) Where –

- (a) any amount has been paid to any person by way of interest under a relevant interest provision, but
- (b) that person was not entitled to that amount under that provision,

the Treasury may, to the best of its judgement, assess the amount so paid to which that person was not entitled and notify it to him.

(2) In this paragraph “relevant interest provision” means –

- (a) paragraph 9 of Schedule 6 to the Finance Act 1994 (interest payable by the Treasury on overpayments of air passenger duty), as applied in the Island;
- (b) ...omitted;
- (c) ...omitted;
- (d) Part II of Schedule 3 to the Finance Act 2001, as it has effect in the Island, (interest).

### **Assessments under paragraphs 14 and 15**

16. (1) An assessment under paragraph 14 or 15 above shall not be made more than two years after the time when evidence of facts sufficient in the opinion of the Treasury to justify the making of the assessment comes to the knowledge of the Treasury.

(2) Where an amount has been assessed and notified to any person under paragraph 14 or 15 above, it shall be recoverable (subject to any provision having effect in accordance with paragraph 19 below) as if it were relevant tax due from him.

(3) Sub-paragraph (2) above does not have effect if, or to the extent that, the assessment in question has been withdrawn or reduced.

### **Interest on amounts assessed**

17. (1) Where an assessment is made under paragraph 14 or 15 above, the whole of the amount assessed shall carry interest at the rate applicable under section 197 of the Finance Act 1996, as applied in the Island, from the date on which the assessment is notified until payment.

(2) Where any person is liable to interest under sub-paragraph (1) above the Treasury may assess the amount due by way of interest and notify it to him.

(3) Without prejudice to the power to make assessments under this paragraph for later periods, the interest to which an assessment under this paragraph may relate shall be confined to interest for a period of no more than two years ending with the time when the assessment under this paragraph is made.

(4) Interest under this paragraph shall be paid without any deduction of income tax.

(5) A notice of assessment under this paragraph shall specify a date, not being later than the date of the notice, to which the amount of interest is calculated; and, if the interest continues to accrue after that date, a further assessment or assessments may be made under this paragraph in respect of amounts which so accrue.

(6) If, within such period as may be notified by the Treasury to the person liable for interest under sub-paragraph (1) above, the amount referred to in that sub-paragraph is paid, it shall be treated for the purposes of that sub-paragraph as paid on the date specified as mentioned in sub-paragraph (5) above.

(7) Where an amount has been assessed and notified to any person under this paragraph it shall be recoverable as if it were relevant tax due from him.

(8) Sub-paragraph (7) above does not have effect if, or to the extent that, the assessment in question has been withdrawn or reduced.

### **Supplementary assessments**

18. If it appears to the Treasury that the amount which ought to have been assessed in an assessment under paragraph 14, 15 or 17 above exceeds the amount which was so assessed, then –

- (a) under the same paragraph as that assessment was made, and
- (b) on or before the last day on which that assessment could have been made,

the Treasury may make a supplementary assessment of the amount of the excess and shall notify the persons concerned accordingly.

### **Review of decisions and appeals**

19. (1) Sections 13A to 16 of the Finance Act 1994 (review and appeals), as applied in the Island, shall have effect in relation to any decision which –

- (a) is contained in an assessment under paragraph 14, 15 or 17 above,
- (b) is a decision about whether any amount is due to the Treasury or about how much is due, and
- (c) is made in a case in which the relevant repayment provision is section 144A of the Customs and Excise Management Act 1986 or Part I of Schedule 3 to the Finance Act 2001, as it has effect in the Island, or the relevant interest provision in Part II of that Schedule,

as if that decision were such a decision as is mentioned in section 13A(2)(b) of that Act of 1994.

(2) ...Omitted.

(3) ...Omitted.

### **Interpretation of Part V**

20. (1) ...Omitted.

(2) In this Part of this Schedule "relevant tax", in relation to any assessment, means –

- (a) a duty of excise if the assessment relates to –
  - (i) a repayment of an amount paid by way of such a duty,
  - (ii) an overpayment of interest under Part II of Schedule 3 to the Finance Act 2001, as it has effect in the Island, or
  - (iii) interest on an amount specified in relation to which the relevant tax is a duty of excise;
- (b) ...omitted;
- (c) ...omitted.

(3) For the purposes of this Part of this Schedule notification to a personal representative, trustee in bankruptcy, interim or permanent trustee, receiver, liquidator or person otherwise acting in a representative capacity in relation to another shall be treated as notification to the person in relation to whom he so acts.

#### **Consequential amendment**

21. In section 197(2) of the Finance Act 1996 (enactments for which interest rates are set under section 197), after paragraph (d) there shall be inserted

“and

- (e) paragraph 17 of Schedule 5 to the Finance Act 1997 (interest on amounts repayable in respect of overpayments by the Treasury in connection with excise duties).”



## Finance Act 1999 (c.16)

### Interest on unpaid customs debts

126. (1) This section applies for the determination and recovery of the amount of any interest charged in accordance with Article 232 of the Community Customs Code (interest on duty not paid within the prescribed period) on arrears of customs duty payable to the Treasury.

(2) Subject to subsection (3) below, the interest shall be charged on the amount in arrears at the rate applicable under section 197 of the Finance Act 1996 (power to fix rates of interest applicable in the case of indirect taxes) for the period which –

- (a) begins with the latest time for payment of that amount; and
- (b) ends with the day before that on which payment of that amount is actually made.

(3) Regulations made for the purposes of this section under section 197 of the Finance Act 1996 may provide that, where the amount of interest computed in any case in accordance with subsection (2) above is less than such minimum amount as may be specified in or determined in accordance with the regulations, the amount of interest charged in that case is (instead of being the amount so computed) to be taken to be equal to that minimum amount.

(4) Subsections (2) and (3) above have effect subject to Article 232(2) of the Community Customs Code (power to waive interest in certain cases).

(5) Any interest the amount of which falls to be determined in accordance with this section shall be recoverable by the Treasury as if it were customs duty; but nothing in this subsection shall be taken to impose any liability to interest on an amount so determined.

(6) Interest on an amount of customs duty shall not be recoverable from any person at any time more than three years after the latest time for payment of that amount unless a written notice that arrears of customs duty attract interest was given to that person by the Treasury at a time falling –

- (a) at or after the time when that amount first became payable; and
- (b) before the end of that three years.

(7) In this section –

“the Community Customs Code” means Council Regulation (EEC) No. 2913/92 establishing the Community Customs Code;

“customs duty” includes any agricultural levy of the European Community; and

“the latest time for payment”, in relation to an amount of customs duty, means the end of the period prescribed by the Community Customs Code for the payment of that amount.

(8) The preceding provisions of this section –

- (a) shall have effect for periods beginning on or after such day as the Treasury may by order made by statutory instrument appoint; and
- (b) shall so have effect in relation to interest running from before that day, as well as in relation to interest running from, or from after, that day;

and different days may be appointed under this subsection for different purposes.

### **Interest on repayments**

127. (1) Subject to the following provisions of this section, where the Treasury are liable to repay an amount to any person in consequence of –

- (a) the payment to it by way of customs duty of an amount that was not due from that person, or
- (b) any requirement to repay an amount of customs duty in accordance with the Community Customs Code or Council Regulation (EEC) No. 2454/93,

then, if and to the extent that it would not be liable to do so apart from this section, the Treasury shall pay interest to him on that amount for the applicable period.

(2) The amounts that carry interest under subsection (1) above –

- (a) include only so much of any amount mentioned in that subsection as is the subject of a claim that the Treasury are required to satisfy or have satisfied; and
- (b) do not include any amount of interest under this section.

(3) Subject to section 128 below, in relation to any amount that carries interest under subsection (1) above, the applicable period for the purposes of this section is the period which –

- (a) begins with the thirty-first working day after the making of the claim for repayment of that amount; and
- (b) ends with the date on which the Treasury issue the repayment of that amount,

and in paragraph (a) above “working day” means any day other than a non-business day within the meaning of section 92 of the Bills of Exchange Act 1883.

(4) The Treasury shall not be liable to pay interest under this section except on the making of a claim for that purpose.

(5) A claim under this section must be in writing and must be made not more than three years after the end of the applicable period to which it relates.

(6) Any reference in this section to the issue by the Treasury of any repayment of any amount includes a reference to the discharge by way of set-off of the Treasury’s liability to repay that amount.

(7) Interest under this section shall be payable at the rate applicable under section 197 of the Finance Act 1996.

(8) In this section and section 128 below –

“the Community Customs Code” means Council Regulation (EEC) No. 2913/92 establishing the Community Customs Code; and

“customs duty” includes any agricultural levy of the European Community.

(9) The Treasury may by order modify subsection (3) above so as to provide for interest under this section to begin to run from a time before the sixty-first day after the making of the claim for repayment.

(10) The power of the Treasury to make an order under subsection (9) above shall be exercisable by statutory document subject to annulment in pursuance of a resolution of Tynwald.

(11) This section has effect in relation only to a repayment the claim for which is made on or after such day as the Treasury may by order made by statutory document appoint; and different days may be appointed under this subsection for different purposes.

### **Periods to be disregarded in determining interest under s.127**

128. (1) In determining the applicable period for the purposes of section 127 above in the case of interest on the amount of any repayment there shall be left out of account any period by which the Treasury's issue of the repayment is delayed as a result of circumstances beyond its control.

(2) The reference in subsection (1) above to a period by which the Treasury's issue of a repayment is delayed as a result of circumstances beyond its control includes, in particular, any period which is referable to any one or more of the matters mentioned in subsections (3) to (5) below.

(3) The first of those matters is any unreasonable delay in the making of any claim for the repayment of the amount on which interest is claimed.

(4) The second of those matters is any failure by any person to provide the Treasury –

- (a) at or before the time of the making of any such claim, or
- (b) subsequently in response to a request for information by the Treasury,

with all the information required by it to enable the existence and amount of the claimant's entitlement to a repayment to be determined.

(5) The third of those matters is the making, as part of or in association with such a claim, of a claim to anything to which the person making the claim has no entitlement.

(6) In determining for the purposes of subsection (4) above whether any period of delay is referable to a failure by any person to provide information in response to a request by the Treasury, there shall be taken to be so referable any period which –

- (a) begins with the date on which the Treasury request that person to provide information which it reasonably considers relevant to the matter to be determined; and
- (b) ends with the earliest date on which it would be reasonable for the Treasury to conclude –
  - (i) that it has received a complete answer to its request for information;
  - (ii) that it has received all that it needs in answer to that request; or
  - (iii) that it is unnecessary for it to be provided with any information in answer to that request.

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## Repayment of overpaid interest etc.

129. (1) Where –

- (a) the Treasury have issued an amount to any person by way of –
  - (i) a payment of interest under section 127 above, or
  - (ii) a repayment of customs duty or of interest on arrears of customs duty,
- (b) that person was not entitled to that amount, and
- (c) the Treasury are entitled to recover it,

the amount shall be recoverable by the Treasury as if it were customs duty.

(2) An amount shall not be recoverable from any person in accordance with subsection (1) above at any time more than three years after the payment or repayment was issued unless a written notice that the amount is recoverable was given to that person by the Treasury before the end of those three years.

(3) Any reference in this section to the issue by the Treasury of any payment or repayment of any amount includes a reference to the discharge by way of set-off of the Treasury's liability to pay or, as the case may be, to repay that amount.

(4) Nothing in this section shall be taken to impose any liability to interest on an amount to which subsection (1) above applies.

(5) In this section –

“customs duty” includes any agricultural levy of the European Community.

(6) This section shall have effect in relation to amounts issued on or after such day as the Treasury may by order made by statutory document appoint; and different days may be appointed under this subsection for different purposes.

**SCHEDULE 3**

**EXCISE DUTY: PAYMENTS BY TREASURY IN CASE OF ERROR OR DELAY**

**Part I**

**Payments**

**Duty paid in error**

1. (1) This paragraph applies if –

- (a) the first condition set out below is satisfied, and
- (b) either the second or the third condition set out below is satisfied.

(2) The first condition is that, due to an error on the part of the Treasury, any of the following occurs at any time –

- (a) a person is refused authorisation for the purposes of section 7(1) or 9(1) of the Alcoholic Liquor Duties Act 1986;
- (b) a person is refused a direction for the purposes of section 10(1) of that Act;
- (c) a person is refused approval for the purposes of section 9(1) or 14(1) of the Hydrocarbon Oil Duties Act 1986;
- (d) a person is refused consent for the purposes of section 10(1) of that Act.

(3) The second condition is that on or after the commencement day a person pays to the Treasury an amount by way of excise duty which would not have been paid but for the error.

(4) The third condition is that on or after the commencement day the person refused pays for goods an amount which includes an amount which –

- (a) represents a payment by way of excise duty, and
- (b) would not have been included but for the error.

(5) If the second condition is satisfied the Treasury may pay to the person refused an amount equal to the duty which would not have been paid.

(6) If the third condition is satisfied the Treasury may pay to the person refused an amount which appears to it to be equal to the payment by way of excise duty.

(7) The person refused is the person refused authorisation, direction, approval or consent.

**Error relating to rebate**

2. (1) This paragraph applies if the following two conditions are satisfied.

(2) The first condition is that a person is entitled to use rebated heavy oil in particular circumstances.

- (3) The second condition is that –
- (a) due to an error on the part of the Treasury he is unable to use rebated heavy oil in those circumstances,
  - (b) he uses unrebated heavy oil instead in those circumstances, and
  - (c) the use occurs on or after the commencement day.

(4) The Treasury may pay to the person an amount equal to the rebate which would have been allowable under section 11 of the Hydrocarbon Oil Duties Act 1986 if –

- (a) the heavy oil used by him in those circumstances had (at the time of that use) been delivered for home use, and
- (b) the other conditions for allowing rebate had been satisfied at that time.

(5) Rebated heavy oil is heavy oil on whose delivery for home use a rebate has been allowed under section 11 of the Hydrocarbon Oil Duties Act 1986, and unrebated heavy oil is other heavy oil.

### **Claims**

3. No payment may be made to a person under this Part of this Schedule unless –
- (a) he makes a claim in such form and manner, and containing such matters, as the Treasury may prescribe by regulations, and
  - (b) he satisfies such other condition as the Treasury may impose by regulations.

## **Part II**

### **Interest**

#### **Treasury's delay**

4. (1) This paragraph applies if –
- (a) a person is entitled to obtain an amount by way of repayment or drawback in respect of excise duty paid to the Treasury,
  - (b) on or after the commencement day he makes a claim for the repayment or drawback, and
  - (c) the Treasury fails to authorise it within the allowable period.
- (2) The Treasury must pay interest to the person on the amount for the applicable period.
- (3) The allowable period is the period of 30 days starting with the day on which the Treasury received the claim.
- (4) The applicable period is the period which –
- (a) starts with the day after the allowable period ends, and
  - (b) ends with the day when the Treasury authorises the repayment or drawback.

- 
- (5) Sub-paragraph (4) is subject to paragraph 6.
5. (1) This paragraph applies if –
- (a) a person is entitled to obtain an amount by way of repayment or drawback in respect of excise duty paid to the Treasury,
  - (b) on or after the commencement day he makes a claim for the repayment or drawback,
  - (c) the Treasury sets off the amount against an assessment,
  - (d) the assessment is withdrawn, and
  - (e) the Treasury authorises the repayment or drawback.
- (2) The Treasury must pay interest to the person on the amount for the applicable period.
- (3) The applicable period is the period which –
- (a) starts with the earlier of the days referred to in sub-paragraph (4), and
  - (b) ends with the day when the Treasury authorises the repayment or drawback.
- (4) The days are –
- (a) the day the amount is set off;
  - (b) the day after the end of the period of 30 days starting with the day on which the Treasury receive the claim.
- (5) Sub-paragraphs (3) and (4) are subject to paragraph 6.
6. (1) In deciding the applicable period for the purposes of paragraphs 4 and 5 any period by which the Treasury's authorisation of the repayment or drawback is delayed by circumstances beyond its control must be ignored.
- (2) In applying sub-paragraph (1) account must be taken in particular of any period referable to –
- (a) any failure by any person to provide the Treasury with information requested by it to enable the existence and amount of the claimant's entitlement to a repayment or drawback to be determined;
  - (b) the making (in connection with the claim for repayment or drawback) of a claim to anything to which the claimant is not entitled.
- (3) In deciding for the purposes of sub-paragraph (2)(a) whether a period of delay is referable to a failure by a person to provide information requested, the period mentioned in sub-paragraph (4) must be taken to be so referable (except so far as may be prescribed by the Treasury by regulations).
- (4) The period is that which –
-

- (a) starts with the day when the Treasury request the person to provide information it reasonably considers relevant to the matter to be determined, and
- (b) ends with the earliest day when it would be reasonable for it to conclude that it has received a complete answer to its request or all it needs to answer it, or to conclude that it is unnecessary for it to be provided with the information in answer to its request.

### **Treasury's error**

7. (1) This paragraph applies if –

- (a) due to an error on the part of the Treasury a person pays to it an amount by way of excise duty,
- (b) the person is entitled to obtain repayment of the amount,
- (c) he makes a claim (at any time) for the repayment and the Treasury authorises it on or after the commencement day, and
- (d) he makes a claim for interest under this paragraph before the end of the period of 4 years starting with the day when the Treasury authorises the repayment.

(2) The Treasury must pay interest to the person on the amount concerned for the applicable period.

(3) The applicable period is the period which –

- (a) starts with the day when the payment is received by the Treasury, and
- (b) ends with the day when it authorises repayment.

(4) Sub-paragraph (3) is subject to paragraph 11.

8. (1) This paragraph applies if –

- (a) a person pays to the Treasury an amount by way of excise duty,
- (b) he is entitled to obtain an amount by way of repayment, remission, rebate or drawback in respect of the duty,
- (c) due to an error on the part of the Treasury he fails to claim the amount when he would (apart from the error) have done so,
- (d) the person makes a claim (at any time) for the repayment, remission, rebate or drawback and the Treasury authorises it on or after the commencement day, and
- (e) he makes a claim for interest under this paragraph before the end of the period of 4 years starting with the day when the Treasury authorises the repayment, remission, rebate or drawback.

(2) The Treasury must pay interest to the person on the amount concerned for the applicable period.



- 
- (3) The applicable period is the period which –
- (a) starts with the day when (apart from the error) the Treasury might reasonably have been expected to authorise repayment, remission, rebate or drawback, and
  - (b) ends with the day when it authorises it.
- (4) Sub-paragraph (3) is subject to paragraph 11.
9. (1) This paragraph applies if –
- (a) a person pays to the Treasury an amount by way of excise duty,
  - (b) he is entitled to obtain an amount by way of repayment, remission, rebate or drawback in respect of the duty,
  - (c) he makes a claim (at any time) for the repayment, remission, rebate or drawback and the Treasury authorises it,
  - (d) due to an error on the part of the Treasury its authorisation is delayed,
  - (e) the Treasury authorise the repayment, remission, rebate or drawback on or after the commencement day,
  - (f) neither paragraph 4 nor paragraph 5 applies in relation to the person, and
  - (g) the person makes a claim for interest under this paragraph before the end of the period of 4 years starting with the day when the Treasury authorises the repayment, remission, rebate or drawback.
- (2) The Treasury must pay interest to the person on the amount concerned for the applicable period.
- (3) The applicable period is the period which –
- (a) starts with the day when (apart from the error) the Treasury might reasonably have been expected to authorise repayment, remission, rebate or drawback, and
  - (b) ends with the day when it authorises it.
- (4) Sub-paragraph (3) is subject to paragraph 11.
10. (1) This paragraph applies if –
- (a) a person makes a claim for a payment under paragraph 1 or 2 of this Schedule and the Treasury authorises it, and
  - (b) he makes a claim for interest under this paragraph before the end of the period of 4 years starting with the day when the Treasury authorises the payment.
- (2) The Treasury must pay interest to the person on the amount concerned for the applicable period.
- (3) The applicable period is the period which –
-

- (a) starts with the day when the second or third condition in paragraph 1 or the second condition in paragraph 2 (as the case may be) is satisfied in relation to that person, and
- (b) ends with the day when the Treasury authorises the payment under that paragraph.

(4) Sub-paragraph (3) is subject to paragraph 11.

11. (1) In deciding the applicable period for the purposes of paragraphs 7 to 10 any period by which the Treasury's authorisation of the repayment, remission, rebate, drawback or payment is delayed by circumstances beyond its control must be ignored.

(2) In applying sub-paragraph (1) account must be taken in particular of any period referable to –

- (a) any unreasonable delay in claiming repayment, remission, rebate, drawback or payment;
- (b) any failure by any person to provide the Treasury with information requested by it to enable the existence and amount of a claimant's entitlement to repayment, remission, rebate, drawback, payment or interest to be determined;
- (c) the making (in connection with the claim for repayment, remission, rebate, drawback or payment) of a claim to anything to which the claimant is not entitled.

(3) In deciding for the purposes of sub-paragraph (2)(b) whether a period of delay is referable to a failure by a person to provide information requested, the period mentioned in sub-paragraph (4) must be taken to be so referable (except so far as may be prescribed by the Treasury by regulations).

(4) The period is that which –

- (a) starts with the day when the Treasury request the person to provide information it reasonably considers relevant to the matter to be determined, and
- (b) ends with the earliest day when it would be reasonable for it to conclude that it has received a complete answer to its request or all it needs to answer it, or to conclude that it is unnecessary for it to be provided with information in answer to its request.

## **Claims**

12. (1) A claim for interest under a relevant paragraph must be made in such form and manner, and contain such matters, as the Treasury may prescribe by regulations.

(2) If a person makes a claim under a relevant paragraph for interest on an amount, he may not make a claim under another relevant paragraph for interest on that amount.

(3) The relevant paragraphs are paragraphs 7 to 10.

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## Rate of interest

13. In the case of interest under this Part of this Schedule, the rate is that applicable under section 197 of the Finance Act 1996 (rates of interest).

## Part III

### Appeals

14. (1) This paragraph applies if –
- (a) a person (the appellant) appeals to a tribunal under section 16 of the Finance Act 1994 in relation to an assessment to excise duty,
  - (b) the appellant pays, or give cash security for, the whole or any part of that duty, and
  - (c) the tribunal finds that the whole or any part of the amount paid or secured is not due.
- (2) The Treasury must repay to the appellant an amount equal to –
- (a) so much of the duty paid as is found not to be due, or
  - (b) so much of the cash security as relates to the duty found not to be due.
- (3) The Treasury must pay interest to the appellant on the amount referred to in subparagraph (2) for the period which –
- (a) starts with the day when the duty is paid or the cash security is given, and
  - (b) ends with the day when the Treasury authorises the repayment.
- (4) The rate of interest is –
- (a) such rate as the tribunal determines, or
  - (b) if it does not determine a rate, the rate applicable under section 197 of the Finance Act 1996.
- (5) In this paragraph “cash security” means such adequate security as enables the Treasury to place the amount in question on deposit.

## Part IV

### General

#### Amendments

15. In section 144A of the Customs and Excise Management Act 1986 (recovery of overpaid excise duty) insert after subsection (5) –

- “(6) This section does not apply in a case where the Treasury are –
- (a) entitled to pay an amount under Part I of Schedule 3 to the Finance Act 2001, as it has effect in the Island, or

(b) required to repay an amount under Part III of that Schedule.”.

16. In section 16(9) of the Finance Act 1994, as it has effect in the Island, (matters which are not ancillary matters) for the words from “paragraph 9(e)” to the end substitute –

“the following paragraphs of Schedule 5 –

- (a) paragraph 3(4);
- (b) paragraph 4(3);
- (c) paragraph 9(e);
- (d) paragraph 9A.”.

17. (1) Schedule 5 to the Finance Act 1994, as it has effect in the Island, (decisions subject to review and appeal) is amended as follows.

(2) In paragraph (3) (decisions about alcoholic liquor) insert after sub-paragraph (3) –

“(4) Any decision which –

- (a) is made under paragraph 1 of Schedule 3 to the Finance Act 2001, as it has effect in the Island, and
- (b) relates to the Alcoholic Liquor Duties Act 1986.”.

(3) In paragraph 4 (decisions about hydrocarbon oil) insert after sub-paragraph (2) –

“(3) Any decision which –

- (a) is made under paragraph 1 or 2 of Schedule 3 to the Finance Act 2001, as it has effect in the Island, and
- (b) relates to the Hydrocarbon Oil Duties Act 1986.”.

(4) After paragraph 9 insert –

**“The Finance Act 2001**

9A. Any decision under or for the purposes of Part II of Schedule 3 to the Finance Act 2001, as it has effect in the Island, (interest).”.

18. (1) Section 197(2) of the Finance Act 1996, as it has effect in the Island, (setting rates of interest) is amended as follows.

(2) For paragraph (a) substitute –

“(a) paragraph 7 of Schedule 6 to the Finance Act 1994, as it has effect in the Island, (interest payable to the Treasury in connection with air passenger duty);”.

(3) After paragraph (f) insert –

“(i) Parts II and III of Schedule 3 to the Finance Act 2001, as it has effect in the Island, (interest payable on repayments etc.).”.

19. (1) Schedule 5 to the Finance Act 1997, as it has effect in the Island, (recovery of excess payments) is amended as follows.

(2) In paragraph 14(3) (assessment for excessive repayment) add –

“or

(d) Part I of Schedule 3 to the Finance Act 2001, as it has effect in the Island, (payments made and rebates disallowed in error).”.

(3) In paragraph 15(2) (assessment for overpayments of interest) add –

“or

(d) Part II of Schedule 3 to the Finance Act 2001, as it has effect in the Island, (interest).”.

(4) In paragraph 19 (review of decisions and appeals) in sub-paragraph (1)(c) for “the relevant interest provision is paragraph 9 of Schedule 6 to the Finance Act 1994” substitute “Part I of Schedule 3 to the Finance Act 2001, as it has effect in the Island, or the relevant interest provision in Part II of that Schedule”.

(5) In paragraph 20 (interpretation of Part V) in sub-paragraph (2)(a)(ii) for “paragraph 9 of Schedule 6 to the Finance Act 1994” substitute “Part II of Schedule 3 to the Finance Act 2001, as it has effect in the Island”.

20. In Schedule 6 to the Finance Act 1994, as it has effect in the Island, paragraphs 9 and 10 (interest in relation to air passenger duty) are omitted.

### **General**

21. ...Omitted.

22. (1) A power to make an order or regulations under this Schedule is exercisable by statutory document.

(2) An order or regulations under this Schedule –

(a) may make different provision for different purposes;

(b) may make incidental, supplemental, saving or transitional provision.

(3) Regulations under this Schedule are subject to annulment in pursuance of a resolution of Tynwald.

23. ...Omitted.

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