

*These draft Regulations replace those laid on 2nd February 2015 and are being issued free of charge to all known recipients of those draft Regulations.*

*Draft Regulations laid before the Scottish Parliament under section 254(3)(g) of the Revenue Scotland and Tax Powers Act 2014, for approval by resolution of the Scottish Parliament.*

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## DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2015 No.**

**TAXES**

### The Revenue Scotland and Tax Powers Act (Reimbursement Arrangements) Regulations 2015

*Made* - - - - *2015*  
*Coming into force* - - *1st April 2015*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 111 and 112 of the Revenue Scotland and Tax Powers Act 2014<sup>(1)</sup> and all other powers enabling them to do so.

In accordance with section 254(3)(g) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

#### **Citation and commencement**

1. These Regulations may be cited as the Revenue Scotland and Tax Powers Act (Reimbursement Arrangements) Regulations 2015 and come into force on 1st April 2015.

#### **Interpretation**

2. In these Regulations—

“the Act” means the Revenue Scotland and Tax Powers Act 2014;

“claim” means a claim made under section 107(2) of the Act for repayment of an amount paid to Revenue Scotland by way of tax which was not chargeable; and “claimed” and “claimant” shall be construed accordingly;

“reimbursement arrangements” means any arrangements for the purposes of a claim which—

(a) are made by a claimant for the purpose of securing that the claimant is not unjustly enriched by the repayment of any amount in pursuance of the claim; and

- (b) provide for the reimbursement of persons (“customers”) who have, for practical purposes, borne the whole or any part of the cost of the original payment of that amount to Revenue Scotland;

“relevant amount” means that part (which may be the whole) of the amount of a claim which the claimant has reimbursed or intends to reimburse to customers.

#### **Reimbursement arrangements – general**

3. For the purposes of section 109 of the Act (defence to certain claims for relief under section 107 or 108) reimbursement arrangements made by a claimant must be disregarded except where they—

- (a) include the provisions described in regulation 4; and
- (b) are supported by the undertakings described in regulation 8.

#### **Reimbursement arrangements – provisions to be included**

4. The provisions referred to in regulation 3(a) are that—

- (a) reimbursement for which the arrangements provide will be completed by no later than 90 days after the repayment to which it relates;
- (b) no deduction will be made from the relevant amount by way of fee or charge (howsoever expressed or effected);
- (c) reimbursement will be made only in cash or by cheque or, with the agreement of the claimant, by electronic transfer;
- (d) any part of the relevant amount that is not reimbursed by the time mentioned in paragraph (a) above will be repaid by the claimant to Revenue Scotland;
- (e) any interest paid by Revenue Scotland on any relevant amount repaid by it will also be treated by the claimant in the same way as the relevant amount falls to be treated under paragraphs (a) and (b); and
- (f) the records described in regulation 6 will be kept by the claimant and produced by that person to Revenue Scotland, or to an officer of Revenue Scotland in accordance with regulation 7.

#### **Repayments to Revenue Scotland**

5. The claimant must, without prior demand, make any repayment to Revenue Scotland that the claimant is required to make by virtue of regulation 4(d) and (e) within 30 days of the expiration of the period of 90 days referred to in regulation 4(a).

#### **Records**

6. The claimant must keep for three years from the date of reimbursement, records of the following matters—

- (a) the names and addresses of those customers whom the claimant has reimbursed or whom the claimant intends to reimburse;
- (b) the total amount reimbursed to each such customer, including in all cases receipts from those reimbursed acknowledging how much has been reimbursed and giving the date of reimbursement;
- (c) the amount of interest included in each total amount reimbursed to each customer;
- (d) the date that each reimbursement is made.

### **Production of records**

7.—(1) Where a claimant is given notice in accordance with paragraph (2), the claimant must in accordance with such notice produce to Revenue Scotland, or to an officer of Revenue Scotland, the records that the claimant is required to keep pursuant to regulation 6.

(2) A notice given for the purposes of paragraph (1) must—

- (a) be in writing;
- (b) state the place and time at which, and the date on which the records are to be produced; and
- (c) be signed and dated by Revenue Scotland, or by an officer of Revenue Scotland,

and may be given before or after, or both before and after, Revenue Scotland has paid the relevant amount to the claimant.

### **Undertakings**

8.—(1) The undertakings referred to in regulation 3(b) must be given to Revenue Scotland by the claimant no later than the time at which the claimant makes the claim for which the reimbursement arrangements have been made.

(2) The undertakings must be in writing, be signed and dated by the claimant, and be to the effect that—

- (a) at the date of the undertakings the claimant is able to identify the names and addresses of those customers whom the claimant has reimbursed or whom the claimant intends to reimburse;
- (b) the claimant will apply the whole of the relevant amount, without any deduction by way of fee or charge or otherwise, to the reimbursement of such customers no later than 90 days after the claimant's receipt of that amount (except insofar as the claimant has already so reimbursed them);
- (c) the claimant will apply any interest paid to the claimant on the relevant amount wholly to the reimbursement of such customers no later than 90 days after the claimant's receipt of that interest;
- (d) the claimant will repay to Revenue Scotland without demand the whole or such part of the relevant amount repaid to the claimant or of any interest paid to the claimant as the claimant fails to apply in accordance with the undertakings mentioned in sub-paragraphs (b) and (c);
- (e) the claimant will keep the records described in regulation 6; and
- (f) the claimant will comply with any notice given in accordance with regulation 7 concerning the production of such records.

(3) The claimant must submit to Revenue Scotland an amended undertaking (to reflect the correction or amendment) within 14 days of—

- (a) the claimant amending a claim under paragraph 10(1) of Schedule 3 to the Act; or
- (b) Revenue Scotland amending a claim under paragraph 14(3)(b) of Schedule 3 to the Act.

### **Penalties**

9.—(1) The provisions in paragraphs 5 to 8 of Schedule 3 to the Act (penalties relating to records) apply to a failure to comply with regulation 6 as they apply to a failure to comply with paragraph 3 of Schedule 3 to the Act (duty to keep and preserve records).

(2) The penalty for failure to comply with a notice given under regulation 7(1) is £300 and a further penalty not exceeding £60 for each subsequent day on which the failure continues.

(3) A claimant who fails to comply with regulation 5 is liable to a penalty of 100% of the amount of any repayment to Revenue Scotland that the claimant is required to make by virtue of regulation 4(d) and (e), but section 218 of the Act (interest on penalties) must not apply to such a penalty.

St Andrew's House,  
Edinburgh  
Date

*Name*  
A member of the Scottish Government

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations come into force on 1st April 2015. They describe the provisions that must be included in reimbursement arrangements made by a person making a claim under section 107 of the Act (recovery of overpaid tax), the undertakings that the person must give and the other requirements with which the person must comply, in order that the reimbursement arrangements are not to be disregarded for the purposes of determining whether the person would be unjustly enriched if the person's claim is met.

Regulation 2 defines certain terms used in the Regulations.

Regulation 3 describes, in general terms, the provisions which a claimant's reimbursement arrangements must include, and the undertakings which the claimant must give.

Regulation 4 describes the detailed provisions that must be included in reimbursement arrangements.

Regulation 5 requires a claimant to repay to Revenue Scotland any amount which the claimant received in order to reimburse customers, but which the claimant had failed to apply to that purpose within 30 days of receipt of that amount.

Regulation 6 describes the records that the claimant must keep relating to the reimbursement arrangements.

Regulation 7 provides for the production of such records.

Regulation 8 describes in detail the undertakings that the claimant must give to comply with the claimant's reimbursement arrangements.

Regulation 9 makes provisions in respect of penalties.