



Finance Act 2019

2019 CHAPTER 1

PART 4

ADMINISTRATION AND ENFORCEMENT

Payment of unlawful advance corporation tax

85 Interest in respect of unlawful ACT

- (1) This section applies where—
 - (a) on any date before 12 December 2012, a person started proceedings against the Commissioners in the High Court or the Court of Session,
 - (b) the proceedings include a claim arising out of a relevant payment, and
 - (c) the claim has not been settled, discontinued or finally determined.
- (2) “Relevant payment” means a payment of unlawful ACT that—
 - (a) was made by the person on or after 1 January 1996 or in the period of 6 years ending immediately before the date the proceedings were started, and
 - (b) was set off or repaid (wholly or in part) before the proceedings were started.
- (3) The person is entitled to an order requiring the Commissioners to pay to the person—
 - (a) an amount (“the principal amount”) equal to the amount of interest that would have accrued if simple interest had accrued on the relevant payment at the appropriate rate for the period beginning with the date the payment was made and ending with—
 - (i) the date as regards which the unlawful ACT was set off, or
 - (ii) the date the unlawful ACT was repaid, and
 - (b) simple interest at the appropriate rate on the principal amount for the period beginning with the day after the date mentioned in paragraph (a)(i) or (ii) and ending with the date the principal amount is paid.
- (4) “The appropriate rate” is, in relation to any day, the rate specified in the following table in respect of that day.

Status: This is the original version (as it was originally enacted).

<i>Period</i>	<i>Rate per year (%)</i>
1 October 1993 to 31 March 1997	8
1 April 1997 to 5 January 1999	6
6 January 1999 to 5 March 1999	5
6 March 1999 to 5 February 2000	4
6 February 2000 to 5 May 2001	5
6 May 2001 to 5 November 2001	4
6 November 2001 to 5 August 2003	3
6 August 2003 to 5 December 2003	2
6 December 2003 to 5 September 2004	3
6 September 2004 to 5 September 2005	4
6 September 2005 to 5 September 2006	3
6 September 2006 to 5 August 2007	4
6 August 2007 to 5 January 2008	5
6 January 2008 to 5 November 2008	4
6 November 2008 to 5 December 2008	3
6 December 2008 to 5 January 2009	2
6 January 2009 to 26 January 2009	1
27 January 2009 to 29 October 2018	0.5
30 October 2018 onwards	0.5 or such other rate as the Treasury may by regulations specify in respect of a period specified in the regulations

- (5) Where the unlawful ACT was repaid, any amount of interest or repayment supplement paid by the Commissioners on the making of the repayment is to be deducted from the principal amount (and subsection (3)(b) has effect accordingly).
- (6) Where part of the unlawful ACT has been set off or repaid at one time, and part of it has been set off or repaid at another time or has not been set off or repaid, for the purposes of this section treat each part as a separate payment.
- (7) In this section—

“the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs (or, in relation to any time before the commencement of section 5 of the Commissioners for Revenue and Customs Act 2005, the Commissioners of Inland Revenue);

“set off or repaid”: references to a payment of unlawful ACT being set off or repaid are—

- (a) to it being set against a liability to corporation tax of any person, or
(b) to it being repaid by the Commissioners;

“settled” means settled by agreement;

“unlawful ACT” means advance corporation tax that was unlawfully levied.

- (8) The Treasury may by regulations substitute for the date for the time being specified in subsection (1)(a) such later date as they consider appropriate.
- (9) Regulations under this section are to be made by statutory instrument.
- (10) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of the House of Commons.

86 Section 85: supplementary

- (1) This section supplements section 85.
- (2) Nothing in section 85 limits the remedies that a court may award in respect of the claim.
- (3) However—
 - (a) a person is not entitled to an order under section 85 in respect of a relevant payment if the person has obtained any other relevant remedy in respect of the relevant payment, and
 - (b) a person who has obtained an order under section 85 in respect of a relevant payment is not entitled to any other relevant remedy in respect of the relevant payment.
- (4) In subsection (3) “relevant remedy” means a remedy for the loss of use of the amount of the relevant payment during the period mentioned in section 85(3)(a) (or during some similar period).
- (5) Any interest or repayment supplement paid by the Commissioners on the making of—
 - (a) a repayment of a relevant payment, or
 - (b) a repayment of corporation tax occurring as a result of a relevant payment,is not regarded as a relevant remedy in respect of the relevant payment.
- (6) Where the right to bring a claim arising out of a payment of unlawful ACT has been transferred from the person who made the payment (“the payor”) to another person (“the successor”)—
 - (a) in section 85(1) the reference to “a person” is to the payor or the successor;
 - (b) in section 85(2) the reference to “the person” is to the payor;
 - (c) in section 85(3) the reference to “the person” is to the successor.
- (7) Any amount paid by the Commissioners to a person on a day by virtue of section 85 is to be brought into account when calculating, for tax purposes, the profits (or income) of the person for any period which includes that day.