

## SCHEDULES

### SCHEDULE 6

Section 50.

#### ASSESSMENTS FOR EXCISE DUTY PURPOSES

##### *Assessment of amounts payable to the Commissioners*

- 1 (1) After section 12 of the Finance Act 1994 there shall be inserted the following sections—

##### **“12A Other assessments relating to excise duty matters**

- (1) This subsection applies where any relevant excise duty relief other than an excepted relief—
- (a) has been given but ought not to have been given, or
  - (b) would not have been given had the facts been known or been as they later turn out to be.
- (2) Where subsection (1) above applies, the Commissioners may assess the amount of the relief given as being excise duty due from the liable person and notify him or his representative accordingly.
- (3) Where an amount has been assessed as due from any person under—
- (a) subsection (2) above,
  - (b) section 94 or 96 of the Management Act, or
  - (c) section 10, 13, 14, 23 or 24 of the Hydrocarbon Oil Duties Act 1979,
- and notice has been given accordingly, that amount shall, subject to any appeal under section 16 below, be deemed to be an amount of excise duty due from that person and may be recovered accordingly, unless, or except to the extent that, the assessment has subsequently been withdrawn or reduced.
- (4) No assessment under any of the provisions referred to in subsection (3) above, or under section 61 or 167 of the Management Act, shall be made at any time after whichever is the earlier of the following times, that is to say—
- (a) subject to subsection (6) below, the end of the period of three years beginning with the relevant time; and
  - (b) the end of the period of one year beginning with the day on which evidence of facts, sufficient in the opinion of the Commissioners to justify the making of the assessment, comes to their knowledge.
- (5) Subsection (4) above shall be without prejudice, where further evidence comes to the knowledge of the Commissioners at any time after the making the assessment concerned, to the making of a further assessment within the period applicable by virtue of that subsection in relation to that further assessment.

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- (6) Subsection (4) above shall have effect as if the reference in paragraph (a) to three years were a reference to twenty years in any case where the assessment has been postponed or otherwise affected by, or the power to make the assessment arises out of, conduct falling within subsection (5)(a) or (b) of section 12 above (construed in accordance with subsection (7) of that section).

**12B Section 12A: supplementary provisions**

- (1) For the purposes of section 12A above and this section, relevant excise duty relief has been given if (and only if)—

- (a) an amount of excise duty which a person is liable to pay has been remitted or payment of an amount of excise duty which a person is liable to pay has been waived;
- (b) an amount of excise duty has been repaid to a person;
- (c) an amount by way of drawback of excise duty has been paid to a person;
- (d) an allowance of excise duty in any amount has been made to a person;
- (e) an amount by way of rebate has been allowed to a person;
- (f) the liability of a person to repay an amount paid by way of drawback of excise duty has been waived;
- (g) an amount has been paid to a person under section 20(3) of the Hydrocarbon Oil Duties Act 1979 (payments in respect of contaminated or accidentally mixed oil); or
- (h) an amount of relief has been allowed to a person by virtue of section 20AA of that Act (power to allow reliefs), or in accordance with paragraph 10 of Schedule 3 to that Act (power to make regulations for the purpose of relieving from excise duty oil intended for exportation or shipment as stores);

and the amount of the relief is the amount mentioned in relation to the relief in this subsection.

- (2) For the purposes of section 12A above the relevant time is—

- (a) in the case of an assessment under section 61 of the Management Act, the time when the ship or aircraft in question returned to a place within the United Kingdom;
- (b) in the case of an assessment under section 94 of that Act, the time at which the goods in question were warehoused;
- (c) in the case of an assessment under that section as it has effect by virtue of section 95 of that Act, the time when the goods in question were lawfully taken from the warehouse;
- (d) in the case of an assessment under section 96 of that Act, the time when the goods in question were moved by pipe-line or notified as goods to be moved by pipe-line;
- (e) in the case of an assessment under section 167 of that Act—
  - (i) if the assessment relates to unpaid duty, the time when the duty became payable or, if later, the time when the document in question was delivered or the statement in question was made; and

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- (ii) if the assessment relates to an overpayment, the time when the overpayment was made;
  - (f) in the case of an assessment under section 10, 13, 14 or 23 of the Hydrocarbon Oil Duties Act 1979, the time of the action which gave rise to the power to assess;
  - (g) in the case of an assessment under section 24(4A) or (4B) of that Act, the time when the rebate was allowed or the oil was delivered without payment of duty (as the case may be);
  - (h) in the case of an assessment under section 12A(2) above, the time when the relevant excise duty relief in question was given.
- (3) In section 12A above “the liable person” means—
- (a) in the case of excise duty which has been remitted or repaid under section 130 of the Management Act on the basis that goods were lost or destroyed while in a warehouse, the proprietor of the goods or the occupier of the warehouse;
  - (b) in the case of a rebate which has been allowed on any oil under section 11 of the Hydrocarbon Oil Duties Act 1979, the person to whom the rebate was allowed or the occupier of any warehouse from which the oil was delivered for home use;
  - (c) in the case of a rebate allowed on any petrol under section 13A of that Act, the person to whom the rebate was allowed or the occupier of any warehouse from which the petrol was delivered for home use;
  - (d) in any other case, the person mentioned in subsection (1) above to whom the relief in question was given.
- (4) In section 12A above—
- “excepted relief” means any relief which is given by the making of a repayment on a claim made under section 137A of the Management Act;
- “representative”, in relation to any person from whom the Commissioners assess an amount as being excise duty due, means his personal representative, trustee in bankruptcy or interim or permanent trustee, any receiver or liquidator appointed in relation to him or any of his property or any other person acting in a representative capacity in relation to him.”
- (2) After section 14(1)(b) of that Act there shall be inserted the following paragraph—
- “(ba) any decision by the Commissioners to assess any person to excise duty under section 12A(2) above, section 61, 94, 96 or 167 of the Management Act or section 10, 13, 14, 23 or 24 of the Hydrocarbon Oil Duties Act 1979, or as to the amount of duty to which a person is to be assessed under any of those provisions;”.
- (3) In sections 12(8) and 13(7) of that Act (definition of “representative” for the purposes of sections 12 and 13), for “or trustee in bankruptcy,” there shall be substituted “, trustee in bankruptcy or interim or permanent trustee,”.

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*Assessments in cases of a deficiency in stores*

- 2 (1) After subsection (7) of section 61 of the Customs and Excise Management Act 1979 (duty payable where deficiency or excess deficiency discovered in goods on return of ship or aircraft to United Kingdom) there shall be inserted the following subsection—
- “(7A) No amount of excise duty shall be payable under subsection (7) above unless the Commissioners have assessed that amount as being excise duty due from the master of the ship or the commander of the aircraft and notified him or his representative accordingly.”
- (2) In subsection (8) of that section (duty payable under subsection (7) recoverable as a civil debt) after “duty” there shall be inserted “, other than excise duty,”.
- (3) After that subsection there shall be inserted the following subsection—
- “(8A) An amount of excise duty assessed as being due under subsection (7A) above shall, unless, or except to the extent that, the assessment has subsequently been withdrawn or reduced and subject to any appeal under section 16 of the Finance Act 1994, be recoverable summarily as a civil debt.”
- (4) In section 1(1) of that Act (interpretation), after the definition of “registered excise dealers and shippers regulations” there shall be inserted—
- ““representative”, in relation to any person from whom the Commissioners assess an amount as being excise duty due, means his personal representative, trustee in bankruptcy or interim or permanent trustee, any receiver or liquidator appointed in relation to him or any of his property or any other person acting in a representative capacity in relation to him;”.

*Assessments in cases of a deficiency in warehoused goods*

- 3 (1) Section 94 of the Customs and Excise Management Act 1979 shall be amended in accordance with sub-paragraphs (2) to (6) below.
- (2) In subsection (3) (power to require payment of duty or repayment of drawback or allowance where warehoused goods are deficient), for the words from “require” to the end there shall be substituted the following paragraphs—
- “(a) require the occupier of the warehouse or the proprietor of the goods to pay immediately any duty, other than excise duty, chargeable or deemed under warehousing regulations to be chargeable on the relevant goods or, in the case of goods warehoused on drawback which could not lawfully be entered for home use, an amount equal to any drawback or allowance of such duty paid in respect of the relevant goods;
- (b) assess, as being excise duty due from the occupier of the warehouse or the proprietor of the goods, the excise duty chargeable or deemed under warehousing regulations to be chargeable on the relevant goods or, in the case of goods warehoused on drawback which could not lawfully be entered for home use, an amount equal to any drawback or allowance of excise duty paid in respect of the relevant goods.”
- (3) After subsection (3) there shall be inserted the following subsection—

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“(3A) Where the Commissioners make an assessment under subsection (3) (b) above they shall notify the person assessed or his representative accordingly.”

(4) In subsection (4) for “(3)” there shall be substituted “(3)(a)”.

(5) After subsection (4) there shall be inserted the following subsections—

“(4A) If—

- (a) the occupier of the warehouse or the proprietor of the goods refuses to pay any amount of excise duty to which he has been assessed under subsection (3)(b) above, and
  - (b) the conditions set out in subsection (4B) below are fulfilled,
- he shall be liable on summary conviction to a penalty of double that amount.

(4B) The conditions are that—

- (a) the period of forty-five days referred to in section 14(3) of the Finance Act 1994 (period during which review may be required) has expired;
- (b) on any review under Chapter II of Part I of that Act the Commissioners' decision (“the original decision”) in relation to the assessment has been confirmed (or treated as confirmed by virtue of section 15(2) of that Act), or confirmed subject only to a reduction in the amount of duty due under the assessment; and
- (c) the final result of any further appeal is that the original decision has been confirmed, subject only to any reduction in the amount of duty due under the assessment; and “final result” means the result of the last of any such appeals, against which no appeal may be made (whether because of expiry of time or for any other reason).

(4C) Where the amount of excise duty due under subsection (3)(b) above is reduced in consequence of a review or appeal, the penalty to which the person assessed is liable under subsection (4A) above shall be a penalty of double the reduced amount.”

(6) After subsection (5) there shall be inserted the following subsection—

“(5A) In this section “the relevant goods” means the missing goods or the whole or any part of the deficiency, as the Commissioners see fit.”

(7) In section 95 of that Act (application of section 94 to certain goods in the course of removal from warehouse), in subsection (2)(b) (section 94 to apply with the omission of references in subsections (3) and (4) to the occupier of the warehouse) for “and (4)” there shall be substituted “, (4) and (4A)”.

*Assessments in cases of a deficiency in goods moved by pipe-line*

4 (1) Section 96 of the Customs and Excise Management Act 1979 shall be amended in accordance with sub-paragraphs (2) to (6) below.

(2) In subsection (2) (power to require payment of unpaid or repaid duty, or repayment of drawback, where goods moved by pipe-line are deficient) for the words from “require” to the end there shall be substituted the following paragraphs—

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- “(a) require the owner of the pipe-line or the proprietor of the goods to pay immediately any duty, other than excise duty, unpaid or repaid on the relevant goods or, as the case may be, an amount equal to any drawback of such duty paid on the relevant goods;
- (b) assess, as being excise duty due from the owner of the pipe-line or the proprietor of the goods, the excise duty unpaid or repaid on the relevant goods or, as the case may be, an amount equal to any drawback of excise duty paid on the relevant goods.”

(3) After subsection (2) there shall be inserted the following subsection—

“(2A) Where the Commissioners make an assessment under subsection (2) (b) above they shall notify the person assessed or his representative accordingly.”

(4) In subsection (3) for “(2)” there shall be substituted “(2)(a)”.

(5) After subsection (3) there shall be inserted the following subsections—

“(3A) If—

- (a) any person refuses to pay any amount of excise duty to which he has been assessed under subsection (2)(b) above, and
  - (b) the conditions set out in paragraphs (a) to (c) of section 94(4B) above (exhaustion of opportunities for review and appeal) are fulfilled,
- he shall be liable on summary conviction to a penalty of double that amount.

(3B) Where the amount of excise duty due under subsection (2)(b) above is reduced in consequence of a review or appeal, the penalty to which the person assessed is liable under subsection (3A) above shall be a penalty of double the reduced amount.”

(6) After subsection (5) there shall be inserted the following subsection—

“(5A) In this section “the relevant goods” means the missing goods or the whole or any part of the deficiency, as the Commissioners see fit.”

*Assessments in cases of untrue declarations etc.*

5 After section 167(4) of the Customs and Excise Management Act 1979 (recovery as a debt due to the Crown or as a civil debt of amounts of duty not paid, and of overpayments in respect of drawback etc. made, by reason of untrue declaration etc.) there shall be inserted the following subsection—

“(5) An amount of excise duty, or the amount of an overpayment in respect of any drawback, allowance, rebate or repayment of any excise duty, shall not be recoverable as mentioned in subsection (4) above unless the Commissioners have assessed the amount of the duty or of the overpayment as being excise duty due from the person mentioned in subsection (1) or (3) above and notified him or his representative accordingly.”

*Assessments relating to hydrocarbon oil duty*

6 (1) In section 10(3) of the Hydrocarbon Oil Duties Act 1979 (power to recover excise duty where restrictions on use of duty-free oil infringed), for the words from “recover” to the end there shall be substituted “assess an amount equal to the excise

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duty on like oil at the rate in force at the time of the contravention as being excise duty due from him, and notify him or his representative accordingly.”

- (2) In section 13(1) of that Act (power to recover rebate where heavy oil is misused), for the words from “recover” to the end there shall be substituted “assess an amount equal to the rebate on like oil at the rate in force at the time of the contravention as being excise duty due from him, and notify him or his representative accordingly.”
- (3) In section 14(4) of that Act (power to recover rebate where light oil delivered for use as furnace fuel is misused), for the words from “recover” to the end there shall be substituted “assess the amount of rebate allowed on the oil as being excise duty due from him, and notify him or his representative accordingly.”
- (4) After subsection (1A) of section 23 of that Act (prohibition on use of road fuel gas on which duty has not been paid) there shall be inserted the following subsection—
  - “(1B) Where any person—
    - (a) uses as fuel in, or
    - (b) takes as fuel into,a road vehicle any road fuel gas on which the excise duty chargeable under section 8 above has not been paid, the Commissioners may assess the amount of that duty as being excise duty due from that person and notify him or his representative accordingly.”
- (5) In subsection (2) of that section, for “subsection (1)(b)” there shall be substituted “subsections (1)(b) and (1B)(b)”.
- (6) After subsection (4) of section 24 of that Act (control of use of duty-free and rebated oil) there shall be inserted the following subsections—
  - “(4A) Where—
    - (a) a rebate of duty is allowed on any oil, and
    - (b) a person contravenes or fails to comply with any requirement which, by virtue of any regulations made under this section, is a condition of allowing the rebate,the Commissioners may assess an amount equal to the rebate as being excise duty due from that person, and notify him or his representative accordingly.
  - (4B) Where—
    - (a) any oil is delivered without payment of duty, and
    - (b) a person contravenes or fails to comply with any requirement which, by virtue of any regulations made under this section, is a condition of allowing the oil to be delivered without payment of duty,the Commissioners may assess an amount equal to the excise duty on like oil at the rate in force at the time of the contravention or failure to comply as being excise duty due from that person, and notify him or his representative accordingly.”
- (7) In the Table set out in section 27(3) of that Act (interpretation), under the heading “Management Act” there shall be inserted at the appropriate place ““representative””.

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*Commencement*

- 7 This Schedule shall come into force on such day as the Commissioners of Customs and Excise may by order made by statutory instrument appoint; and different days may be appointed under this paragraph for different purposes.