SCHEDULES

SCHEDULE 1

Section 4

BEER FROM SMALL BREWERIES: REDUCED RATE OF DUTY

1 (1) Section 36 of the Alcoholic Liquor Duties Act 1979 (c. 4) (beer: charge of excise duty) is amended as follows.

(2) In subsection (1), for "at the rate of £11.89 per hectolitre per cent of alcohol in the beer" substitute " at the rates specified in subsection (1AA) below ".

(3) After subsection (1), insert—

"(1AA) The rates at which the duty shall be charged are—

(a) in the case of beer that is not small brewery beer, £11.89 per hectolitre per cent of alcohol in the beer;

(b) in the case of small brewery beer produced in a singleton brewery, the rate per hectolitre per cent of alcohol in the beer that is given by section 36D below;

(c) in the case of small brewery beer produced in a co-operated brewery, the rate per hectolitre per cent of alcohol in the beer that is given by section 36F below.".

2 In that Act, after that section (and before the heading *"Reliefs from excise dut"y*) insert—

"Reduced rates of excise duty

36A Beer from small breweries: introductory

(1) For the purposes of section 36(1AA) above (but subject to subsection (2) below)—

(a) whether beer produced in a singleton brewery is "small brewery beer" is determined in accordance with section 36C below, and

(b) whether beer produced in a co-operated brewery is "small brewery beer" is determined in accordance with section 36E below.

(2) Beer is not small brewery beer if it is produced by a person on any premises in circumstances in which he is required to be, but is not, registered under section 47 below in respect of those premises.

36B Interpretation of provisions relating to small brewery beer

(1) The following provisions of this section have effect for the purposes of section 36(1AA) above, section 36A above, this section and sections 36C to 36F below.

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(2) A brewery is a "singleton brewery" at any particular time in a calendar year if it is not a co-operated brewery at that time.

(3) A brewery is a "co-operated brewery" at any particular time in a calendar year if—

(a) a person who produces beer in the brewery at that time or any earlier time in that year, or

(b) a person connected with such a person,

also produces beer in any other brewery at that time or any earlier time in that year.

(4) "Brewery" means premises (whether or not in the United Kingdom) on which beer is produced and that are situated physically apart from any other premises on which beer is produced.

(5) "The standard beer duty rate" means the rate of duty specified by section 36(1AA)(a) above.

(6) References to "the grossed-up amount" of an estimate of the amount of a brewery's production in a calendar year are to the amount given by—

$$\frac{E}{(365-N)} \times 365$$

where—

E is the amount of the estimate, and

N is the number of days (if any) in the calendar year before the brewery begins to be used as beer-production premises.

(7) References to a brewery being used as beer-production premises are, in the case of a brewery in the United Kingdom, to there being at least one person who is required to be registered under section 47 below in respect of the brewery.

(8) Any question whether a person is connected with another shall be determined in accordance with section 839 of the Income and Corporation Taxes Act 1988.

36C Meaning of "small brewery beer": beer from singleton breweries

(1) This section applies to beer produced in a brewery at a time in a calendar year ("the current year") when the brewery is a singleton brewery.

(2) The beer is "small brewery beer" if the following conditions are satisfied; but this is subject to subsections (9) and (10) below.

(3) The first condition is that either—

(a) no beer was produced in the brewery in the previous calendar year ("the previous year"), or

(b) the amount of beer produced in the brewery in the previous year was not more than 30,000 hectolitres.

(4) For the purposes of subsection (3)(b) above, where the brewery was in use as beer-production premises during part only of the previous year, the amount of beer produced in the previous year in the brewery shall be taken to have been—

$$\frac{A}{D} \times 365$$

where—

A is the amount of beer actually produced in the previous year in the brewery, and

D is the number of days in that part of the previous year.

(5) The second condition is that the amount of the estimate under subsection (9) below of the brewery's production in the current year is not more than 30,000 hectolitres.

(6) The third condition is that if the brewery begins to be used as beer-production premises part-way through the current year, the grossed-up amount of that estimate is not more than 30,000 hectolitres.

(7) The fourth condition is that less than half of the beer produced in the brewery in the previous year was produced under licence.

(8) The fifth condition is that the beer is not produced under licence.

(9) Beer produced in the brewery in the current year before the person who first produces beer in the brewery in that year has made a reasonable estimate of the amount of beer that will be produced in the brewery in that year is not small brewery beer.

(10) Beer produced in the brewery in the current year after the amount of beer produced in the brewery in the current year has reached 30,000 hectolitres is not small brewery beer.

(11) Subsection (10) above is without prejudice to section 167(4) of the Customs and Excise Management Act 1979 (recovery of duty unpaid by reason of untrue document or statement).

36D Rate of duty for small brewery beer from singleton breweries

(1) This section applies to small brewery beer produced in a brewery at a time in a calendar year ("the current year") when the brewery is a singleton brewery.

(2) The rate of duty in the case of that beer ("the brewery rate") is determined in accordance with this section.

(3) Subsection (4) below applies if—

(a) beer was produced in the brewery in the previous calendar year ("the previous year") and the amount produced in the brewery in that year was not more than 5,000 hectolitres, or

(b) no beer was produced in the brewery in the previous year and the grossed-up amount of the estimate under section 36C(9) above of

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the brewery's production in the current year is not more than 5,000 hectolitres.

(4) If this subsection applies, "the brewery rate" is 50% of the standard beer duty rate at the time concerned; but this is subject to rounding under subsection (7) below.

(5) Subsection (6) below applies if—

(a) beer was produced in the brewery in the previous year and the amount produced in the brewery in that year was more than 5,000 hectolitres but not more than 30,000 hectolitres, or

(b) no beer was produced in the brewery in the previous year and the grossed-up amount of the estimate under section 36C(9) above of the brewery's production in the current year is more than 5,000 hectolitres but not more than 30,000 hectolitres.

(6) If this subsection applies, "the brewery rate" is, subject to rounding under subsection (7) below, given by—

$$\frac{P-2{,}500}{P} \times \text{the standard beer duty rate at the time c}$$

where—

if this subsection applies by reason of subsection (5)(a) above, P is the amount, in hectolitres, of beer produced in the brewery in the previous year, and

if this subsection applies by reason of subsection (5)(b) above, P is the grossed-up amount (expressed in hectolitres) mentioned in subsection (5)(b).

(7) Where a rate given by subsection (4) or (6) above would (apart from this subsection) not be a whole number of pennies, the rate given by that subsection shall be taken to be the rate actually given by that subsection rounded up to the nearest penny.

(8) Where the brewery was in use as beer-production premises during part only of the previous year, for the purposes of subsections (3)(a), (5)(a) and (6) above the amount of beer produced in the brewery in the previous year shall be taken to have been—

$$\frac{A}{D} \times 365$$

where—

A is the amount of beer actually produced in the previous year in the brewery, and

D is the number of days in that part of the previous year.

36E Meaning of "small brewery beer": beer from co-operated breweries

(1) This section applies to beer produced in a brewery at a time in a calendar year ("the current year") when the brewery is a co-operated brewery.

(2) The beer is "small brewery beer" if the following conditions are satisfied; but this is subject to subsections (10) and (11) below.

(3) In this section—

"the group" means the group of breweries consisting of—

(a) the co-operated brewery, and

(b) every brewery (other than the co-operated brewery) in which beer is produced at the time mentioned in subsection (1) above, or at any earlier time in the current year, by—

(i) a person who produces beer in the co-operated brewery at the time so mentioned or at any earlier time in the current year, or

(ii) a person connected with such a person;

"group brewery" means a brewery that is in the group;

"the previous year" means the calendar year immediately preceding the current year.

(4) The first condition is that either—

(a) no beer was produced in the previous year in the group, or

(b) the amount given by PY + GE is not more than 30,000 hectolitres, where—

PY is the amount of beer produced in the previous year in the group, and

GE is the aggregate of the grossed-up amount of each estimate that—

(i) is an estimate for the purposes of subsection (10) below of the amount of the production in the current year in a group brewery in which no beer was produced in the previous year, and

(ii) is made no later than the time mentioned in subsection (1) above.

(5) For the purposes of subsection (4)(b) above, where a group brewery was in use as beer-production premises during part only of the previous year, the amount of beer produced in the previous year in that brewery shall be taken to have been—

$$\frac{A}{D} \times 365$$

where—

A is the amount of beer actually produced in the previous year in that brewery, and

D is the number of days in that part of the previous year.

(6) The second condition is that the aggregate of each estimate that—

(a) is an estimate for the purposes of subsection (10) below of the amount of a group brewery's production in the current year, and

(b) is made no later than the time mentioned in subsection (1) above,

is not more than 30,000 hectolitres.

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(7) The third condition is that if any group brewery begins to be used as beer-production premises part-way through the current year, the aggregate of the grossed-up amount of each estimate that—

(a) is an estimate for the purposes of subsection (10) below of the amount of a group brewery's production in the current year, and

(b) is made no later than the time mentioned in subsection (1) above,

is not more than 30,000 hectolitres.

(8) The fourth condition is that less than half of the beer produced in the previous year in each group brewery was produced under licence.

(9) The fifth condition is that the beer is not produced under licence.

(10) Beer produced in the co-operated brewery at an unestimated time is not small brewery beer; and here "unestimated time" means a time in the current year when there is a group brewery for which there does not exist a reasonable estimate, made by the person who first produces beer in that brewery in that year, of the amount of beer that will be produced in that brewery in that year.

(11) Beer produced in the co-operated brewery in the current year after the amount of beer produced in the group in the current year has reached 30,000 hectolitres is not small brewery beer.

(12) Subsection (11) above is without prejudice to section 167(4) of the Customs and Excise Management Act 1979 (recovery of duty unpaid by reason of untrue document or statement).

36F Rate of duty for small brewery beer from co-operated breweries

(1) This section applies to small brewery beer produced in a brewery at a time in a calendar year ("the current year") when the brewery is a co-operated brewery.

(2) The rate of duty in the case of that beer ("the brewery rate") is determined in accordance with this section.

(3) In this section—

"the group" means the group of breweries consisting of—

(a) the co-operated brewery, and

(b) every brewery (other than the co-operated brewery) in which beer is produced at the time mentioned in subsection (1) above, or at any earlier time in the current year, by—

(i) a person who produces beer in the co-operated brewery at the time so mentioned or at any earlier time in the current year, or

(ii) a person connected with such a person;

"group brewery" means a brewery that is in the group;

"the previous year" means the calendar year immediately preceding the current year;

"the notional previous year's production" has the meaning given by subsection (4) below.

(4) In this section "the notional previous year's production" means the amount, in hectolitres, given by PY + GE where—

PY is the amount of beer produced in the group in the previous year, and

GE is the aggregate of the grossed-up amount of each estimate that—

(a) is an estimate for the purposes of section 36E(10) above of the amount of the production in the current year in a group brewery in which no beer was produced in the previous year, and

(b) is made no later than the time mentioned in subsection (1) above.

(5) Where a group brewery was in use as beer-production premises during part only of the previous year, in calculating PY for the purposes of subsection (4) above the amount of beer produced in that brewery in the previous year shall be taken to have been—

$$\frac{A}{D} \times 365$$

where—

A is the amount of beer actually produced in the previous year in that brewery, and

D is the number of days in that part of the previous year.

(6) Subsection (7) below applies if—

(a) beer was produced in at least one group brewery in the previous year and the notional previous year's production is not more than 5,000 hectolitres, or

(b) no beer was produced in the group in the previous year and the aggregate of each estimate that—

(i) is an estimate for the purposes of section 36E(10) above of the amount of a group brewery's production in the current year, and

(ii) is made no later than the time mentioned in subsection (1) above,

is not more than 5,000 hectolitres.

(7) If this subsection applies, "the brewery rate" is 50% of the standard rate at the time mentioned in subsection (1) above; but this is subject to rounding under subsection (10) below.

(8) Subsection (9) below applies if—

(a) beer was produced in at least one group brewery in the previous year and the notional previous year's production is more than 5,000 hectolitres but not more than 30,000 hectolitres, or

(b) no beer was produced in the group in the previous year and the aggregate mentioned in subsection (6)(b) above is more than 5,000 hectolitres but not more than 30,000 hectolitres.

(9) If this subsection applies, "the brewery rate" is, subject to rounding under subsection (10) below, given by—

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$$\frac{P-2{,}500}{P} \times \text{the standard rate}$$

where—

if this subsection applies by reason of subsection (8)(a) above, P is the previous year's notional production,

if this subsection applies by reason of subsection (8)(b) above, P is the amount, in hectolitres, of the aggregate mentioned in subsection (6)(b) above, and

"the standard rate" means the standard beer duty rate at the time mentioned in subsection (1) above.

(10) Where a rate given by subsection (7) or (9) above would (apart from this subsection) not be a whole number of pennies, the rate given by that subsection shall be taken to be the rate actually given by that subsection rounded up to the nearest penny.

36G Assessments where incorrectly low rate of duty applied

(1) Subsection (3) below applies if—

(a) duty is charged by section 36 above on any beer, and

(b) it appears at the excise duty point that the beer is small brewery beer for the purposes of section 36(1AA) above, but

(c) it turns out that the beer was not small brewery beer for those purposes (because, for example, circumstances were not as they appeared at that point or they subsequently changed).

(2) Subsection (3) below also applies if—

(a) duty is charged by section 36 above on any beer that is small brewery beer for the purposes of section 36(1AA) above, and

(b) the rate of duty that at the excise duty point appeared to be the correct rate turns out to have been lower than the correct rate (because, for example, circumstances were not as they appeared at that point or they subsequently changed).

(3) In any such case the Commissioners—

(a) may assess the amount that is the difference between—

(i) the actual amount of the duty charged on the beer by section 36 above, and

(ii) the lower amount that, at the excise duty point, appeared to be the amount charged,

as being excise duty due from the person liable to pay the duty charged on the beer by section 36 above, and

(b) may notify him or his representative accordingly.

(4) Where two or more persons are liable to pay the duty charged on the beer—

(a) the reference in subsection (3)(a) above to the person liable to pay the duty is to any one or more of those persons, and

(b) the reference in subsection (3)(b) above to notifying the person liable or his representative is to notifying each person assessed or his representative.

36H Power to vary reduced rate provisions

(1) The Treasury may by order made by statutory instrument make provision amending this Act for the purpose of causing excise duty to be charged on a description of beer—

(a) at a reduced rate instead of at the standard rate;

(b) at the standard rate instead of at a reduced rate;

(c) at a different reduced rate.

(2) In this section—

"reduced rate" means a rate lower than the standard rate, and

"the standard rate" means the rate specified by section 36(1AA)(a) above.

(3) An order under subsection (1) above may—

(a) make different provision for different cases;

(b) make such consequential amendments in this Act and other enactments as appear to the Treasury to be necessary or expedient;

(c) make such other consequential provision, and such incidental and transitional provision, as appears to the Treasury to be necessary or expedient.

(4) A statutory instrument by which there is made an order under subsection (1) above shall be laid before the House of Commons after being made.

Unless the instrument is approved by the House of Commons before the expiration of 28 days beginning with the date on which the instrument was made, the order shall cease to have effect on the expiration of that period.

Where the order so ceases to have effect, that does not prejudice—

(a) anything previously done under the order, or

(b) the making of a new order.

In reckoning any such period of 28 days, no account shall be taken of any time during which Parliament is dissolved or prorogued or during which the House of Commons is adjourned for more than 4 days.".

Commencement Information

I1 Sch. 1 para. 2 wholly in force; Sch. 1 para. 2 in force for specified purposes at 1.6.2002, otherwise Sch. 1 para. 2 in force at 24.7.2002, see. s. 4

3 In section 49(1) of the Alcoholic Liquor Duties Act 1979 (c. 4) (beer regulations), after paragraph (j) insert—

"(k) requiring the production of certificates as to matters relating to beer imported into the United Kingdom and the beer's production and producer, whether as alternative conditions for charging the duty on

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the beer at a rate lower than that specified by section 36(1AA)(a) above or as evidence that conditions for charging the duty at such a rate are satisfied.”.

4 (1) The Finance Act 1994 (c. 9) is amended as follows.

(2) In section 12A(3)(bb) (recovery of amounts assessed under the Alcoholic Liquor Duties Act 1979), for “or 11" substitute “ , 11 or 36G ”.

(3) In section 12B(2) (meaning of “relevant time" in section 12A), after paragraph (eb) insert—

“(ec) in the case of an assessment under section 36G of that Act, the the time at which the requirement to pay the duty took effect (which time, in a case where there was an excise duty point for the beer fixed under section 1 of the Finance (No. 2) Act 1992, is that excise duty point);”.

(4) In section 14(1)(ba) (review of assessments), for “or 11" substitute “ , 11 or 36G ”.

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