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Changes to legislation: *There are currently no known outstanding effects for the Finance (No. 3) Act 2010, SCHEDULE 13. (See end of Document for details)*

SCHEDULES

SCHEDULE 13

Section 29

EXCISE DUTIES: COMPLIANCE CHECKS

Commencement Information

I1 Sch. 13 amendments in force at 1.4.2011 by S.I. 2011/777, **art. 2** (with transitional provisions in arts. 3-8)

PART 1

RECORD-KEEPING

1 (1) Section 118A of CEMA 1979 (duty of revenue traders to keep records) is amended as follows.

(2) In subsection (1)(b), for "require" substitute " specify in writing (and different lesser periods may be specified for different cases) ".

(3) For subsection (3) substitute—

"(3) A duty imposed by this section to preserve records may be discharged—

(a) by preserving them in any form and by any means, or

(b) by preserving the information contained in them in any form and by any means,

subject to any conditions or exceptions specified in writing by the Commissioners."

(4) Omit subsections (4) to (6).

2 In consequence of the amendment made by paragraph 1(4)—

(a) in FA 1994, omit section 256(3), and

(b) in the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995, omit paragraph 18(2) of Schedule 4.

PART 2

TIME LIMITS

Assessments

VALID FROM 01/04/2011

3 (1) Section 12 of FA 1994 (assessments to excise duty) is amended as follows.

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(2) In subsections (4)(a) and (5), for "three years" substitute " 4 years ".

(3) In subsection (5), for the words from "in the case" to the end substitute " in any case falling within subsection (5A)(a) or (b) ".

(4) After subsection (5) insert—

"(5A) The cases are—

(a) a case involving a loss of duty of excise brought about deliberately by the person assessed (P) or by another person acting on P's behalf, and

(b) a case in which P has participated in a transaction knowing that it was part of arrangements of any kind (whether or not legally enforceable) intended to bring about a loss of duty of excise."

(5) After subsection (6) insert—

"(6A) The reference in subsection (5A) to a loss of duty of excise brought about deliberately by P or another person includes a loss that arises as a result of—

(a) a deliberate inaccuracy in a document given to Her Majesty's Revenue and Customs by that person, or

(b) a deliberate failure by that person to comply with an obligation specified in the Table in paragraph 1 of Schedule 41 to the Finance Act 2008 with respect to that duty of excise."

(6) Omit subsection (7).

(7) The amendments made by this paragraph have effect in relation to the making of assessments under section 20AAB(4) of HODA 1979 as to the making of assessments under section 12(1) of FA 1994 (see section 20AAB(5) of HODA 1979).

VALID FROM 01/04/2011

4 In consequence of the amendment made by paragraph 3(6), omit paragraph 22 of Schedule 6 to the Serious Crime Act 2007.

VALID FROM 01/04/2011

5 (1) Section 12A of FA 1994 (other assessments relating to excise duty matters) is amended as follows.

(2) In subsections (4)(a) and (6), for "three years" substitute " 4 years ".

(3) In subsection (6), for the words from "where the assessment" to the end substitute " falling within section 12(5A)(a) or (b) ".

(4) After subsection (6) insert—

"(7) For the purposes of subsection (6), a reference in section 12(5A) to a loss of duty of excise includes a loss caused by giving relief, allowing a rebate,

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conferring an entitlement to drawback or repaying an amount that ought not to have been given, allowed, conferred or repaid."

VALID FROM 01/04/2011

6 (1) Schedule 4A to BGDA 1981 (unlicensed amusement machines) is amended as follows.

(2) In paragraph 2(3)(a), for "three years" substitute " 4 years ".

(3) In sub-paragraph (5) of paragraph 6—

(a) for "three years" substitute " 4 years ", and

(b) omit "or (7)".

(4) For sub-paragraph (6) of that paragraph substitute—

"(6) This sub-paragraph applies where—

(a) a loss of amusement machine licence duty is brought about deliberately by the responsible person or anyone acting on the responsible person's behalf (including a representative), or

(b) the responsible person has participated in a transaction knowing that it was part of arrangements of any kind (whether or not legally enforceable) intended to bring about a loss of amusement machine licence duty."

(5) Omit sub-paragraph (7) of that paragraph.

Claims

VALID FROM 01/04/2011

7 In section 137A(4) of CEMA 1979 (recovery of overpaid excise duty), for "three years" substitute " 4 years ".

VALID FROM 01/04/2011

8 In Schedule 3 to FA 2001 (excise duty: payments by Commissioners in case of error or delay), in each of the following provisions, for "three years" substitute " 4 years "

(a) paragraph 7(1)(d),

(b) paragraph 8(1)(e),

(c) paragraph 9(1)(g), and

(d) paragraph 10(1)(b).

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PART 3

INFORMATION AND INSPECTION POWERS

9 CEMA 1979 is amended as follows.

10 In section 112 (power of entry upon premises etc of revenue traders), after subsection (6) insert—

"(7) For the purposes of subsection (1)—

(a) it does not matter if the premises in question are owned or used partly for the purposes of the trade and partly for other purposes (including as a dwelling), but

(b) the officer may not enter or inspect any part of the premises that is used solely as a dwelling.

(8) Premises used to hold or store anything for the purposes of a revenue trader's trade are taken to be used by the revenue trader for the purposes of that trade, regardless of who owns or occupies the premises."

11 After that section insert—

"**112A Section 112: supplementary powers**

(1) The power in section 112(1) includes power to inspect any business documents that are on the premises.

(2) "Business documents" means documents (or copies of documents) that relate to the carrying on of the revenue trader's trade, whether or not ones that a person may be required to produce under section 118B.

(3) Subsections (4) to (8) of section 118B apply to documents inspected under section 112(1) as they apply to documents produced under section 118B.

(4) The power in section 112(1) also includes power—

(a) to mark items that have been examined or inspected, and anything containing such items, for the purpose of indicating that they have been examined or inspected, and

(b) to obtain and record information (whether electronically or otherwise) relating to the premises, items and documents that have been examined or inspected."

12 After section 118B insert—

"**118BA Further duty to provide information and documents**

(1) An officer may by notice in writing require a person to provide documents if—

(a) they are reasonably required by the officer for the purpose of protecting, securing, collecting or managing revenues derived from duties of excise, and

(b) the officer has reasonable cause to believe that the person is in possession or control of them.

(2) An officer may not give a notice under this section without the approval of the tribunal.

(3) An application for approval may be made without notice (except as required under subsection (4)).

(4) The tribunal may not give its approval unless—
- (a) it is satisfied that, in the circumstances, the officer proposing to give the notice is justified in doing so,
- (b) the person to whom the notice is to be given has been told that the documents are required and given a reasonable opportunity to make representations to an officer, and
- (c) the tribunal has been given a summary of any representations made by that person.

(5) Paragraphs (b) and (c) of subsection (4) do not apply to the extent that the tribunal is satisfied that taking the action specified in those paragraphs might prejudice the protection, security, collection or management of revenues derived from duties of excise.

(6) A decision of the tribunal under this section is final (despite the provisions of sections 11 and 13 of the Tribunals, Courts and Enforcement Act 2007).

(7) The following provisions of Schedule 36 to the Finance Act 2008 apply to a notice under this section as they apply to an information notice—
- (a) paragraphs 7 and 8 (complying with notices and producing copies of documents),
- (b) paragraphs 15 and 16 (powers to copy and remove documents),
- (c) Part 4 (restrictions on powers) except paragraphs 21, 21A and 28, and
- (d) Part 9 (miscellaneous provisions and interpretation) so far as relevant to the provisions listed above.

(8) The powers in this section apply to information as they apply to documents (and "documents" is to be read accordingly).

(9) Nothing in this section affects or limits section 118B.

118BB Inspection powers: goods-based duties

(1) This section applies to premises if an officer has reasonable cause to believe that—
- (a) the premises are used in connection with the supply, importation or exportation of goods of a class or description chargeable with a duty of excise, and
- (b) any such goods, or documents relating to any such goods, are on the premises.

(2) The officer may at any reasonable time enter and inspect the premises and inspect—
- (a) any goods found on the premises, and
- (b) any documents found on the premises that appear to the officer to relate to the supply, importation or exportation of goods of a class or description chargeable to duty of excise.

(3) For the purposes of this section—

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(a) it does not matter if the premises are used partly for a purpose mentioned in subsection (1)(a) and partly for other purposes (including as a dwelling), but

(b) the officer may not enter or inspect any part of the premises that is used solely as a dwelling.

(4) Premises used to hold or store goods in connection with their supply, importation or exportation are taken to be premises used in connection with the supply, importation or exportation of goods, regardless of who owns or occupies the premises.

118BC Inspection powers: gaming duty

(1) This section applies to premises if an officer has reasonable cause to believe that section 10 gaming is taking place, has taken place or is about to take place on the premises.

(2) The officer may at any reasonable time enter and inspect the premises and inspect—

(a) accounts, records and other documents in the custody or control of any person who is engaging, or whom the officer reasonably suspects of engaging, in section 10 gaming or in any activity by reason of which the person is or may become liable to gaming duty, and

(b) any equipment that is being, or the officer reasonably suspects of having been or of being intended to be, used on the premises for or in connection with section 10 gaming.

(3) Subsection (1) does not permit an officer to enter or inspect a particular part of premises if—

(a) the officer has no reasonable cause to believe that section 10 gaming is taking place, has taken place or is about to take place in that part, and

(b) the part is used solely as a dwelling.

(4) "Section 10 gaming" means gaming to which section 10 of the Finance Act 1997 applies.

118BD Inspection powers: supplementary provision

(1) If an officer, in the course of exercising a power under section 118BB or 118BC, finds reason to believe that the premises are owned or used by a revenue trader (within the meaning of section 112), the officer may also exercise any power that the officer could have exercised under section 112 if the officer had entered the premises under that section.

(2) Subsections (4) to (8) of section 118B apply to documents inspected under section 118BB or 118BC as they apply to documents produced under section 118B.

(3) The powers under sections 118BB and 118BC include power—

(a) to mark items that have been inspected, and anything containing such items, for the purpose of indicating that they have been inspected, and

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(b) to obtain and record information (whether electronically or otherwise) relating to the premises, items and documents that have been inspected."

13 In section 118C (entry and search of premises and persons), omit subsections (2), (2A) and (2B).

14 In section 118D (order for access to recorded information), in subsection (5), for "118B and 118C" substitute " 118B to 118C ".

15 (1) Section 118G (offences under Part 9) is amended as follows.

(2) The existing provisions become subsection (1).

(3) After that subsection insert—

"(2) Part 7 of Schedule 36 to the Finance Act 2008 (penalties) applies to a person who fails to comply with a notice under section 118BA as it applies to a person who fails to comply with an information notice.

(3) Part 8 of that Schedule (offences) applies in relation to documents that are or are likely to be the subject of a notice under section 118BA as it applies in relation to documents that are or are likely to be the subject of an information notice (with the reference to approval of the tribunal in accordance with paragraph 3 or 5 of that Schedule being read as a reference to approval of the tribunal in accordance with section 118BA of this Act)."

16 (1) Section 161A (power to search premises: search warrant) is amended as follows.

(2) After subsection (2) insert—

"(2A) The power in subsection (2)(a) includes power to search for and remove documents relating to any such thing (including documents about title, storage and movement)."

(3) In subsection (3), for "subsections (1) and (2)" substitute " subsections (1), (2) and (2A) ".

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