Finance Act 2015

2015 CHAPTER 11

PART 2

EXCISE DUTIES AND OTHER TAXES

Alcohol

54 Wholesaling of controlled liquor

(1) ALDA 1979 is amended as set out in subsections (2) to (5).

(2) In section 4 (interpretation)—

(a) in subsection (1), in the definition of "wholesale", after " "wholesale"" insert " (except in Part 6A) ",

(b) in the Table in subsection (3), at the appropriate place insert—

"excise duty point", and

(c) in subsection (4), after "Act" insert " (except in Part 6A) ".

(3) After Part 6 insert—

"**PART 6A**

WHOLESALING OF CONTROLLED LIQUOR

88A **Definitions**

(1) This section defines certain expressions used in this Part.

(2) A sale is of "controlled liquor" if—

(a) it is a sale of dutiable alcoholic liquor on which duty is charged under this Act at a rate greater than nil, and

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(b) the excise duty point for the liquor falls at or before the time of the sale.

(3) Controlled liquor is sold "wholesale" if—

(a) the sale is of any quantity of the liquor,

(b) the seller is carrying on a trade or business and the sale is made in the course of that trade or business,

(c) the sale is to a buyer carrying on a trade or business, for sale or supply in the course of that trade or business, and

(d) the sale is not an incidental sale, a group sale or an excluded sale,

and a reference to buying controlled liquor wholesale is to be read accordingly.

(4) A sale is an "incidental sale" if—

(a) the seller makes authorised retail sales of alcoholic liquor of any description, and

(b) the sale is incidental to those sales.

(5) A sale is an "authorised retail sale" if it is made by retail under and in accordance with a licence or other authorisation under an enactment regulating the sale and supply of alcohol.

(6) A sale is a "group sale" if the seller and the buyer are both bodies corporate which are members of the same group (see section 88J).

(7) A sale is an "excluded sale" if it is of a description prescribed by or under regulations made by the Commissioners.

(8) "Controlled activity" means—

(a) selling controlled liquor wholesale,

(b) offering or exposing controlled liquor for sale in circumstances in which the sale (if made) would be a wholesale sale, or

(c) arranging in the course of a trade or business for controlled liquor to be sold wholesale, or offered or exposed for sale in circumstances in which the sale (if made) would be a wholesale sale.

(9) "UK person" means a person who is UK-established for the purposes of value added tax (see paragraph 1(10) of Schedule 1 to the Value Added Tax Act 1994).

(10) "Enactment" includes an enactment contained in—

(a) an Act of the Scottish Parliament;

(b) an Act or Measure of the National Assembly for Wales;

(c) Northern Ireland legislation.

88B **Further provision relating to definitions**

(1) The Commissioners may by regulations make provision as to the cases in which sales are, or are not, to be treated for the purposes of this Part as—

(a) wholesale sales,

(b) sales of controlled liquor,

(c) incidental sales,

(d) authorised retail sales, or

(e) group sales.

(2) The Commissioners may by regulations make provision as to the cases in which a person is, or is not, to be treated for the purposes of this Part as carrying on a controlled activity by virtue of section 88A(8)(b) or (c) (offering and exposing for sale and arranging for sale etc).

88C **Approval to carry on controlled activity**

(1) A UK person may not carry on a controlled activity otherwise than in accordance with an approval given by the Commissioners under this section.

(2) The Commissioners may approve a person under this section to carry on a controlled activity only if they are satisfied that the person is a fit and proper person to carry on the activity.

(3) The Commissioners may approve a person under this section to carry on a controlled activity for such periods and subject to such conditions or restrictions as they may think fit or as they may by or under regulations made by them prescribe.

(4) The conditions or restrictions may include conditions or restrictions requiring the controlled activity to be carried on only at or from premises specified or approved by the Commissioners.

(5) The Commissioners may at any time for reasonable cause revoke or vary the terms of an approval under this section.

(6) In this Part "approved person" means a person approved under this section to carry on a controlled activity.

88D **The register of approved persons**

(1) The Commissioners must maintain a register of approved persons.

(2) The register is to contain such information relating to approved persons as the Commissioners consider appropriate.

(3) The Commissioners may make publicly available such information contained in the register as they consider necessary to enable those who deal with a person who carries on a controlled activity to determine whether the person in question is an approved person in relation to that activity.

(4) The information may be made available by such means (including on the internet) as the Commissioners consider appropriate.

88E **Regulations relating to approval, registration and controlled activities**

(1) The Commissioners may by regulations make provision—

(a) regulating the approval and registration of persons under this Part,

(b) regulating the variation or revocation of any such approval or registration or of any condition or restriction to which such an approval or registration is subject,

(c) about the register maintained under section 88D,

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(d) regulating the carrying on of controlled activities, and

(e) imposing obligations on approved persons.

(2) The regulations may, in particular, make provision—

(a) requiring applications, and other communications with the Commissioners, to be made electronically,

(b) as to the procedure for the approval and registration of bodies corporate which are members of the same group and for members of such a group to be jointly and severally liable for any penalties imposed under—

(i) the regulations, or

(ii) Schedule 2B,

(c) requiring approved persons to keep and make available for inspection such records relating to controlled activities as may be prescribed by or under the regulations,

(d) imposing a penalty of an amount prescribed by the regulations (which must not exceed £1,000) for a contravention of—

(i) the regulations, or

(ii) any condition or restriction imposed under this Part,

(e) for the assessment and recovery of such a penalty, and

(f) for dutiable alcoholic liquor (whether or not charged with any duty and whether or not that duty has been paid) to be subject to forfeiture for a contravention of—

(i) this Part or the regulations, or

(ii) any condition or restriction imposed under this Part.

88F **Restriction on buying controlled liquor wholesale**

A person may not buy controlled liquor wholesale from a UK person unless the UK person is an approved person in relation to the sale.

88G **Offences**

(1) A person who contravenes section 88C(1) by selling controlled liquor wholesale is guilty of an offence if the person knows or has reasonable grounds to suspect that—

(a) the buyer is carrying on a trade or business, and

(b) the liquor is for sale or supply in the course of that trade or business.

(2) A person who contravenes section 88C(1) by offering or exposing controlled liquor for sale in circumstances in which the sale (if made) would be a wholesale sale is guilty of an offence if the person intends to make a wholesale sale of the liquor.

(3) A person who contravenes section 88C(1) by arranging in the course of a trade or business for controlled liquor to be sold wholesale, or offered or exposed for sale in circumstances in which the sale (if made) would be a wholesale sale, is guilty of an offence if the person intends to arrange for the liquor to be sold wholesale.

(4) A person who contravenes section 88F is guilty of an offence if the person knows or has reasonable grounds to suspect that the UK person from whom the controlled liquor is bought is not an approved person in relation to the sale.

(5) A person guilty of an offence under this section is liable on summary conviction—
- (a) in England and Wales to—
  - (i) imprisonment for a term not exceeding 12 months,
  - (ii) a fine, or
  - (iii) both,
- (b) in Scotland to—
  - (i) imprisonment for a term not exceeding 12 months,
  - (ii) a fine not exceeding the statutory maximum, or
  - (iii) both, and
- (c) in Northern Ireland to—
  - (i) imprisonment for a term not exceeding 6 months,
  - (ii) a fine not exceeding the statutory maximum, or
  - (iii) both.

(6) A person guilty of an offence under this section is liable on conviction on indictment to—
- (a) imprisonment for a period not exceeding 7 years,
- (b) a fine, or
- (c) both.

(7) The reference in subsection (5)(a)(i) to 12 months is to be read as a reference to 6 months in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003.

88H **Penalties**

Schedule 2B contains provision about penalties for contraventions of this Part.

88I **Regulations**

Regulations under this Part—
- (a) may make provision which applies generally or only for specified cases or purposes,
- (b) may make different provision for different cases or purposes,
- (c) may include incidental, consequential, transitional or transitory provision, and
- (d) may confer a discretion on the Commissioners.

88J **Groups**

(1) Two or more bodies corporate are members of a group for the purposes of this Part if each is established or has a fixed establishment in the United Kingdom and—
- (a) one of them controls each of the others,

(b) one person (whether a body corporate or an individual) controls all of them, or

(c) two or more individuals carrying on a business in partnership control all of them.

(2) For the purposes of this section, a body corporate is to be taken to control another body corporate if—

(a) it is empowered by or under an enactment to control that body's activities, or

(b) it is that body's holding company within the meaning of section 1159 of, and Schedule 6 to, the Companies Act 2006.

(3) For the purposes of this section—

(a) an individual or individuals are to be taken to control a body corporate if the individual or individuals (were the individual or individuals a company) would be that body's holding company within the meaning of section 1159 of, and Schedule 6 to, the Companies Act 2006, and

(b) a body corporate is established or has a fixed establishment in the United Kingdom if it is so established or has such an establishment for the purposes of value added tax.

88K **Index**

This Table lists the places where some of the expressions used in this Part are defined or otherwise explained.

(4) In section 90 (procedure for regulations)—

(a) after subsection (1) insert—

"(1A) A statutory instrument containing regulations under Part 6A is subject to annulment in pursuance of a resolution of the House of Commons.", and

(b) in subsection (2), after "containing" insert " any other ".

(5) After Schedule 2A insert—

"SCHEDULE 2B Section 88H

PENALTIES FOR CONTRAVENTIONS OF PART 6A

Liability to penalty

1 A penalty is payable by a person ("P") who contravenes section 88C(1) or 88F.

Amount of penalty

2 (1) If the contravention is deliberate and concealed, the amount of the penalty is the maximum amount (see paragraph 10).

(2) If the contravention is deliberate but not concealed, the amount of the penalty is 70% of the maximum amount.

(3) In any other case, the amount of the penalty is 30% of the maximum amount.

(4) The contravention is—

(a) "deliberate and concealed" if the contravention is deliberate and P makes arrangements to conceal the contravention, and

(b) "deliberate but not concealed" if the contravention is deliberate but P does not make arrangements to conceal the contravention.

Reductions for disclosure

3 (1) Paragraph 4 provides for reductions in penalties under this Schedule where P discloses a contravention.

(2) P discloses a contravention by—

(a) telling the Commissioners about it,

(b) giving the Commissioners reasonable help in identifying any other contraventions of section 88C(1) or 88F of which P is aware, and

(c) allowing the Commissioners access to records for the purpose of identifying such contraventions.

(3) Disclosure of a contravention—

(a) is "unprompted" if made at a time when P has no reason to believe that the Commissioners have discovered or are about to discover the contravention, and

(b) otherwise, is "prompted".

(4) In relation to disclosure "quality" includes timing, nature and extent.

4 (1) Where P discloses a contravention, the Commissioners must reduce the penalty to one that reflects the quality of the disclosure.

(2) If the disclosure is prompted, the penalty may not be reduced below—

(a) in the case of a contravention that is deliberate and concealed, 50% of the maximum amount,

(b) in the case of a contravention that is deliberate but not concealed, 35% of the maximum amount, and

(c) in any other case, 20% of the maximum amount.

(3) If the disclosure is unprompted, the penalty may not be reduced below—

(a) in the case of a contravention that is deliberate and concealed, 30% of the maximum amount,

(b) in the case of a contravention that is deliberate but not concealed, 20% of the maximum amount, and

(c) in any other case, 10% of the maximum amount.

Special reduction

5 (1) If the Commissioners think it right because of special circumstances, they may reduce a penalty under this Schedule.

(2) In sub-paragraph (1) "special circumstances" does not include ability to pay.

(3) In sub-paragraph (1) the reference to reducing a penalty includes a reference to—

(a) staying a penalty, and

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(b) agreeing a compromise in relation to proceedings for a penalty.

Assessment

6 (1) Where P becomes liable for a penalty under this Schedule, the Commissioners must—

(a) assess the penalty,

(b) notify P, and

(c) state in the notice the contravention in respect of which the penalty is assessed.

(2) A penalty under this Schedule must be paid before the end of the period of 30 days beginning with the day on which notification of the penalty is issued.

(3) An assessment is to be treated as an amount of duty due from P under this Act and may be recovered accordingly.

(4) An assessment of a penalty under this Schedule may not be made later than one year after evidence of facts sufficient in the opinion of the Commissioners to indicate the contravention comes to their knowledge.

(5) Two or more contraventions may be treated by the Commissioners as a single contravention for the purposes of assessing a penalty under this Schedule.

Reasonable excuse

7 (1) Liability to a penalty does not arise under this Schedule in respect of a contravention which is not deliberate if P satisfies the Commissioners or (on an appeal made to the appeal tribunal) the tribunal that there is a reasonable excuse for the contravention.

(2) For the purposes of sub-paragraph (1), where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the contravention.

Companies: officer's liability

8 (1) Where a penalty under this Schedule is payable by a company in respect of a contravention which was attributable to an officer of the company, the officer is liable to pay such portion of the penalty (which may be 100%) as the Commissioners may specify by written notice to the officer.

(2) Sub-paragraph (1) does not allow the Commissioners to recover more than 100% of a penalty.

(3) In the application of sub-paragraph (1) to a body corporate other than a limited liability partnership, "officer" means—

(a) a director (including a shadow director within the meaning of section 251 of the Companies Act 2006),

(b) a manager, and

(c) a secretary.

(4) In the application of sub-paragraph (1) to a limited liability partnership, "officer" means a member.

(5) In the application of sub-paragraph (1) in any other case, "officer" means—

(a) a director,

(b) a manager,

(c) a secretary, and

(d) any other person managing or purporting to manage any of the company's affairs.

(6) Where the Commissioners have specified a portion of a penalty in a notice given to an officer under sub-paragraph (1)—

(a) paragraph 5 applies to the specified portion as to a penalty,

(b) the officer must pay the specified portion before the end of the period of 30 days beginning with the day on which the notice is given,

(c) sub-paragraphs (3) to (5) of paragraph 6 apply as if the notice were an assessment of a penalty, and

(d) paragraph 9 applies as if the officer were liable to a penalty.

(7) In this paragraph "company" means any body corporate or unincorporated association, but does not include a partnership.

Double jeopardy

9 P is not liable to a penalty under this Schedule in respect of a contravention in respect of which P has been convicted of an offence.

The maximum amount

10 (1) In this Schedule "the maximum amount" means £10,000.

(2) If it appears to the Treasury that there has been a change in the value of money since the last relevant date, they may by regulations substitute for the sum for the time being specified in sub-paragraph (1) such other sum as appears to them to be justified by the change.

(3) In sub-paragraph (2), "relevant date" means—

(a) the date on which the Finance Act 2015 is passed, and

(b) each date on which the power conferred by that sub-paragraph has been exercised.

(4) Regulations under this paragraph do not apply to any contravention which occurred before the date on which they come into force.

Appeal tribunal

11 In this Schedule "appeal tribunal" has the same meaning as in Chapter 2 of Part 1 of the Finance Act 1994."

(6) In section 13A(2) of FA 1994 (meaning of "relevant decision"), after paragraph (e) insert—

"(ea) any decision by HMRC that a person is liable to a penalty, or as to the amount of the person's liability, under—

(i) regulations under section 88E of the Alcoholic Liquor Duties Act 1979; or

(ii) Schedule 2B to that Act;".

(7) In Schedule 5 to that Act (decisions subject to review and appeal), in paragraph 3(1), after paragraph (o) insert—

"(p) any decision for the purposes of Part 6A (wholesaling of controlled liquor) as to whether or not, and in which respects, any person is to be, or to continue to be, approved and registered or as to the conditions or restrictions subject to which any person is approved and registered.".

(8) Subject as follows, the amendments made by this section come into force on the day on which this Act is passed.

(9) So far as relating to section 88C(1) of ALDA 1979, subsection (3) comes into force on 1 January 2016 (but see subsection (12) for the application of section 88C(1) in cases where an application has been made but not disposed of by that date).

(10) So far as relating to section 88F of ALDA 1979, subsection (3) comes into force on such day as the Treasury may by regulations made by statutory instrument appoint.

(11) An application for a person to be approved under section 88C of ALDA 1979 may not be made before 1 October 2015.

(12) Where such an application made before 1 January 2016 has not been disposed of by that date, section 88C(1) of ALDA 1979 does not apply in relation to the person until the application is disposed of.

(13) An application is "disposed of" when—

(a) it is determined by Her Majesty's Revenue and Customs,

(b) it is withdrawn, or

(c) it is abandoned or otherwise ceases to have effect.

Commencement Information

I1 S. 54(3) in force at 1.4.2017 for specified purposes by S.I. 2017/494, **reg. 2**

Changes to legislation:
There are currently no known outstanding effects for the Finance Act 2015, Section 54.