

SCHEDULE 1

Consequential Amendments and Supplemental Provisions – Primary Legislation

Finance Act 2003

388. After paragraph 36 insert the following—

“Appeal: HMRC review or determination by tribunal

36A.—(1) This paragraph applies if notice of appeal has been given to HMRC.

(2) In such a case—

- (a) the appellant may notify HMRC that the appellant requires HMRC to review the matter in question (see paragraph 36B),
- (b) HMRC may notify the appellant of an offer to review the matter in question (see paragraph 36C), or
- (c) the appellant may notify the appeal to the tribunal (see paragraph 36D).

(3) See paragraphs 36G and 36H for provision about notifying appeals to the tribunal after a review has been required by the appellant or offered by HMRC.

(4) This paragraph does not prevent the matter in question from being dealt with in accordance with paragraph 37(1) (settling of appeals by agreement).

Appellant requires review by HMRC

36B.—(1) Sub-paragraphs (2) and (3) apply if the appellant notifies HMRC that the appellant requires HMRC to review the matter in question.

(2) HMRC must, within the relevant period, notify the appellant of HMRC’s view of the matter in question.

(3) HMRC must review the matter in question in accordance with paragraph 36E.

(4) The appellant may not notify HMRC that the appellant requires HMRC to review the matter in question and HMRC shall not be required to conduct a review if—

- (a) the appellant has already given a notification under this paragraph in relation to the matter in question,
- (b) HMRC have given a notification under paragraph 36C in relation to the matter in question, or
- (c) the appellant has notified the appeal to the tribunal under paragraph 36D.

(5) In this paragraph “relevant period” means—

- (a) the period of 30 days beginning with the day on which HMRC receive the notification from the appellant, or
- (b) such longer period as is reasonable.

HMRC offer review

36C.—(1) Sub-paragraphs (2) to (6) apply if HMRC notify the appellant of an offer to review the matter in question.

(2) When HMRC notify the appellant of the offer, HMRC must also notify the appellant of HMRC’s view of the matter in question.

Changes to legislation: There are currently no known outstanding effects for the *The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009, Paragraph 388*. (See end of Document for details)

(3) If, within the acceptance period, the appellant notifies HMRC of acceptance of the offer, HMRC must review the matter in question in accordance with paragraph 36E.

(4) If the appellant does not give HMRC such a notification within the acceptance period, HMRC's view of the matter in question is to be treated as if it were contained in an agreement in writing under paragraph 37(1) for the settlement of that matter.

(5) The appellant may not give notice under paragraph 37(2) (desire to withdraw from agreement) in a case where sub-paragraph (4) applies.

(6) Sub-paragraph (4) does not apply to the matter in question if, or to the extent that, the appellant notifies the appeal to the tribunal under paragraph 36H.

(7) HMRC may not notify the appellant of an offer to review the matter in question (and, accordingly, HMRC shall not be required to conduct a review) if—

- (a) HMRC have already given a notification under this paragraph in relation to the matter in question,
- (b) the appellant has given a notification under paragraph 36B in relation to the matter in question, or
- (c) the appellant has notified the appeal to the tribunal under paragraph 36D.

(8) In this paragraph “acceptance period” means the period of 30 days beginning with the date of the document by which HMRC notify the appellant of the offer to review the matter in question.

Notifying appeal to the tribunal

36D.—(1) This paragraph applies in a case where paragraph 36A applies.

(2) The appellant may notify the appeal to the tribunal.

(3) If the appellant notifies the appeal to the tribunal, the tribunal is to decide the matter in question.

(4) Sub-paragraphs (2) and (3) do not apply in a case where—

- (a) HMRC have given a notification of their view of the matter in question under paragraph 36B, or
- (b) HMRC have given a notification under paragraph 36C in relation to the matter in question.

(5) In a case falling within sub-paragraph (4)(a) or (b), the appellant may notify the appeal to the tribunal, but only if permitted to do so by paragraph 36G or 36H.

Nature of review etc

36E.—(1) This paragraph applies if HMRC are required by paragraph 36B or 36C to review the matter in question.

(2) The nature and extent of the review are to be such as appear appropriate to HMRC in the circumstances.

(3) For the purpose of sub-paragraph (2), HMRC must, in particular, have regard to steps taken before the beginning of the review—

- (a) by HMRC in deciding the matter in question, and
- (b) by any person in seeking to resolve disagreement about the matter in question.

(4) The review must take account of any representations made by the appellant at a stage which gives HMRC a reasonable opportunity to consider them.

- (5) The review may conclude that HMRC’s view of the matter in question is to be—
 - (a) upheld,
 - (b) varied, or
 - (c) cancelled.
- (6) HMRC must notify the appellant of the conclusions of the review and their reasoning within—
 - (a) the period of 45 days beginning with the relevant day, or
 - (b) such other period as may be agreed.
- (7) In sub-paragraph (6) “relevant day” means—
 - (a) in a case where the appellant required the review, the day when HMRC notified the appellant of HMRC’s view of the matter in question,
 - (b) in a case where HMRC offered the review, the day when HMRC received notification of the appellant’s acceptance of the offer.
- (8) Where HMRC are required to undertake a review but do not give notice of the conclusions within the period specified in sub-paragraph (6), the review is treated as having concluded that HMRC’s view of the matter in question (see paragraphs 36B(2) and 36C(2)) is upheld.
- (9) If sub-paragraph (8) applies, HMRC must notify the appellant of the conclusions which the review is treated as having reached.

Effect of conclusions of review

- 36F.**—(1) This paragraph applies if HMRC give notice of the conclusions of a review (see paragraph 36E).
- (2) The conclusions are to be treated as if they were an agreement in writing under paragraph 37(1) for the settlement of the matter in question.
 - (3) The appellant may not give notice under paragraph 37(2) (desire to withdraw from agreement) in a case where sub-paragraph (2) applies.
 - (4) Sub-paragraph (2) does not apply to the matter in question if, or to the extent that, the appellant notifies the appeal to the tribunal under paragraph 36G.

Notifying appeal to tribunal after review concluded

- 36G.**—(1) This paragraph applies if—
- (a) HMRC have given notice of the conclusions of a review in accordance with paragraph 36E, or
 - (b) the period specified in paragraph 36E(6) has ended and HMRC have not given notice of the conclusions of the review.
- (2) The appellant may notify the appeal to the tribunal within the post-review period.
 - (3) If the post-review period has ended, the appellant may notify the appeal to the tribunal only if the tribunal gives permission.
 - (4) If the appellant notifies the appeal to the tribunal, the tribunal is to determine the matter in question.
 - (5) In this paragraph “post-review period” means—

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- (a) in a case falling within sub-paragraph (1)(a), the period of 30 days beginning with the date of the document in which HMRC give notice of the conclusions of the review in accordance with paragraph 36E(6), or
- (b) in a case falling within sub-paragraph (1)(b), the period that—
 - (i) begins with the day following the last day of the period specified in paragraph 36E(6), and
 - (ii) ends 30 days after the date of the document in which HMRC give notice of the conclusions of the review in accordance with paragraph 36E(9).

Notifying appeal to tribunal after review offered but not accepted

36H.—(1) This paragraph applies if—

- (a) HMRC have offered to review the matter in question (see paragraph 36C), and
 - (b) the appellant has not accepted the offer.
- (2) The appellant may notify the appeal to the tribunal within the acceptance period.
- (3) But if the acceptance period has ended, the appellant may notify the appeal to the tribunal only if the tribunal gives permission.
- (4) If the appellant notifies the appeal to the tribunal, the tribunal is to determine the matter in question.
- (5) In this paragraph “acceptance period” has the same meaning as in paragraph 36C.

Other interpretation

36I.—(1) In paragraphs 36A to 36H—

- (a) “matter in question” means the matter to which an appeal relates;
 - (b) a reference to a notification is a reference to a notification in writing.
- (2) In paragraphs 36A to 36H, a reference to the appellant includes a person acting on behalf of the appellant except in relation to—
- (a) notification of HMRC’s view under paragraph 36B(2),
 - (b) notification by HMRC of an offer of review (and of their view of the matter) under paragraph 36C,
 - (c) notification of the conclusions of a review under paragraph 36E(6), and
 - (d) notification of the conclusions of a review under paragraph 36E(9).
- (3) But if a notification falling within any of the sub-paragraphs of paragraph (2) is given to the appellant, a copy of the notification may also be given to a person acting on behalf of the appellant.”.

Commencement Information

II Sch. 1 para. 388 in force at 1.4.2009, see [art. 1\(2\)](#)

Changes to legislation:

There are currently no known outstanding effects for the The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009, Paragraph 388.