
Changes to legislation: There are currently no known outstanding effects for the Finance Act 2017, SCHEDULE 10. (See end of Document for details)

SCHEDULES

SCHEDULE 10

Section 55

SOFT DRINKS INDUSTRY LEVY: APPEALS AND REVIEWS

PART 1

APPEALABLE DECISIONS

Appealable decisions

- 1 A person may appeal against a decision of the Commissioners or an officer of Revenue and Customs in respect of any of the following matters—
- (a) whether or not a person is liable to pay an amount of soft drinks industry levy;
 - (b) whether or not the Commissioners are liable to repay an amount to a person under paragraph 8(2) of Schedule 8 (overpaid levy);
 - (c) whether or not the repayment of an amount under that paragraph is excessive (see paragraph 12 of that Schedule);
 - (d) whether or not a person is liable to pay an amount to the Commissioners in pursuance of an obligation imposed by regulations under paragraph 11(3)(b), (c) or (e) of Schedule 8 (reimbursement arrangements);
 - (e) whether or not a person is liable to a penalty under paragraph 1(1) or (6) or 2(1) or (3) of Schedule 9 (requirements to keep records etc: penalties);
 - (f) the amount of soft drinks industry levy payable by a person;
 - (g) the amount that the Commissioners are liable to repay to a person under paragraph 8(2) of Schedule 8;
 - (h) where repayment of an amount under that paragraph is excessive, the amount of the excess;
 - (i) the amount that a person is liable to pay to the Commissioners in pursuance of an obligation imposed by regulations under paragraph 11(3)(b), (c) and (e) of Schedule 8;
 - (j) the amount of a penalty payable under paragraph 1(1) or (6) or 2(1) or (3) of Schedule 9;
 - (k) the determination of a dilution ratio under section 27(2)(b);
 - (l) the registration, or cancellation of registration, of a person under this Part for the purposes of soft drinks industry levy;
 - (m) the period by reference to which payments of soft drinks industry levy are to be made;
 - (n) a person's entitlement to a tax credit, the withdrawal of a tax credit, the amount of a tax credit or the period for which a tax credit is to be brought into account under regulations under section 39;

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- (o) the giving of a direction by the Commissioners under section 53(2) (keeping and preserving records).

Commencement Information

I1 Sch. 10 para. 1 in force at 6.4.2018 by S.I. 2018/464, art. 2(e)

PART 2

REVIEWS

Offer of review

- 2 (1) HMRC must offer a person (P) a review of a decision that has been notified to P if an appeal in respect of the decision may be brought under paragraph 1.
- (2) The offer of the review must be made by notice given to P at the same time as the decision is notified to P.
- (3) This paragraph does not apply to the notification of the conclusions of a review.

Commencement Information

I2 Sch. 10 para. 2 in force at 6.4.2018 by S.I. 2018/464, art. 2(e)

Right to require review

- 3 (1) Any person (other than P) who has the right of appeal under paragraph 1 against a decision may require HMRC to review that decision if that person has not appealed to the appeal tribunal.
- (2) A notification that such a person requires a review must be made within 30 days of that person becoming aware of the decision.

Commencement Information

I3 Sch. 10 para. 3 in force at 6.4.2018 by S.I. 2018/464, art. 2(e)

Review by HMRC

- 4 (1) HMRC must review a decision if—
- (a) they have offered a review of the decision under paragraph 2, and
- (b) P notifies HMRC accepting the offer within 30 days from the date of the document containing the notification of the offer.
- (2) But P may not notify acceptance of the offer if P has already appealed to the appeal tribunal under paragraph 1.
- (3) HMRC must review a decision if a person other than P notifies them under paragraph 3.

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- (4) HMRC may not review a decision if P, or another person, has appealed to the appeal tribunal under paragraph 1 in respect of the decision.

Commencement Information

I4 Sch. 10 para. 4 in force at 6.4.2018 by S.I. 2018/464, art. 2(e)

Extensions of time

- 5 (1) If under paragraph 2 HMRC have offered P a review of a decision, HMRC may within the relevant period notify P that the relevant period is extended.
- (2) If under paragraph 3 another person may require HMRC to review a matter, HMRC may within the relevant period notify the other person that the relevant period is extended.
- (3) If notice is given the relevant period is extended to the end of 30 days from—
- (a) the date of the notice, or
 - (b) any other date set out in the notice or a further notice.
- (4) In this paragraph “relevant period” means—
- (a) the period of 30 days referred to in—
 - (i) paragraph 4(1)(b) (in a case falling within sub-paragraph (1)), or
 - (ii) paragraph 3(2) (in a case falling within sub-paragraph (2)), or
 - (b) if notice has been given under sub-paragraph (1) or (2), that period as extended (or as most recently extended) in accordance with sub-paragraph (3).

Commencement Information

I5 Sch. 10 para. 5 in force at 6.4.2018 by S.I. 2018/464, art. 2(e)

Review out of time

- 6 (1) This paragraph applies if—
- (a) HMRC have offered a review of a decision under paragraph 2 and P does not accept the offer within the time allowed under paragraph 4(1)(b) or 5(3), or
 - (b) a person who requires a review under paragraph 3 does not notify HMRC within the time allowed under that paragraph or paragraph 5(3).
- (2) HMRC must review the decision under paragraph 4 if—
- (a) after the time allowed, P, or the other person, notifies HMRC in writing requesting a review out of time,
 - (b) HMRC are satisfied that P, or the other person, had a reasonable excuse for not accepting the offer or requiring review within the time allowed, and
 - (c) HMRC are satisfied that P, or the other person, made the request without unreasonable delay after the excuse had ceased to apply.
- (3) HMRC may not review a decision if P, or another person, has appealed to the appeal tribunal under paragraph 1 in respect of the decision.

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I6 Sch. 10 para. 6 in force at 6.4.2018 by S.I. 2018/464, art. 2(e)

Nature of review etc.

- 7 (1) This paragraph applies if HMRC are required to undertake a review under paragraph 4 or 6.
- (2) The nature and extent of the review are to be such as appear appropriate to HMRC in the circumstances.
- (3) For the purposes of sub-paragraph (2), HMRC must, in particular, have regard to steps taken before the beginning of the review—
- (a) by HMRC in reaching the decision, and
 - (b) by any person in seeking to resolve disagreement about the decision.
- (4) The review must take account of any representations made by P, or the other person, at a stage which gives HMRC a reasonable opportunity to consider them.
- (5) The review may conclude that the decision is to be—
- (a) upheld,
 - (b) varied, or
 - (c) cancelled.
- (6) HMRC must give P, or the other person, notice of the conclusions of the review and their reasoning within—
- (a) a period of 45 days beginning with the relevant date, or
 - (b) such other period as HMRC and P, or the other person, may agree.
- (7) In sub-paragraph (6) “relevant date” means—
- (a) the date HMRC received P's notification accepting the offer of a review (in a case falling within paragraph 2), or
 - (b) the date HMRC received notification from another person requiring review (in a case falling within paragraph 3), or
 - (c) the date on which HMRC decided to undertake the review (in a case falling within paragraph 6).
- (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 to be treated as having concluded that the decision is upheld.
- (9) If sub-paragraph (8) applies HMRC must notify P, or the other person, of the conclusion which the review is treated as having reached.

Commencement Information

I7 Sch. 10 para. 7 in force at 6.4.2018 by S.I. 2018/464, art. 2(e)

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Service of notices

- 8 A notice under this Schedule may be given to a person by sending it to that person by post, addressed to the person's last known address.

Commencement Information

I8 Sch. 10 para. 8 in force at 6.4.2018 by S.I. 2018/464, art. 2(e)

PART 3

APPEALS

“Appeal tribunal”

- 9 In this Schedule “appeal tribunal” means the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal.

Commencement Information

I9 Sch. 10 para. 9 in force at 6.4.2018 by S.I. 2018/464, art. 2(e)

Bringing of appeals

- 10 (1) An appeal under paragraph 1 is to be made to the appeal tribunal before—
- (a) the end of the period of 30 days beginning with—
 - (i) in a case where P is the appellant, the date of the document notifying the decision to which the appeal relates, or
 - (ii) in a case where a person other than P is the appellant, the date that person becomes aware of the decision, or
 - (b) if later, the end of the relevant period (within the meaning of paragraph 5).
- (2) But that is subject to sub-paragraphs (3) to (5).
- (3) In a case where HMRC are required to undertake a review under paragraph 4—
- (a) an appeal may not be made until the conclusion date, and
 - (b) any appeal is to be made within the period of 30 days beginning with the conclusion date.
- (4) In a case where HMRC are requested to undertake a review by virtue of paragraph 6—
- (a) an appeal may not be made to the appeal tribunal—
 - (i) unless HMRC have notified P, or the other person, as to whether or not a review will be undertaken, and
 - (ii) if HMRC have notified P, or the other person, that a review will be undertaken, until the conclusion date;
 - (b) any appeal where paragraph (a)(ii) applies is to be made within the period of 30 days beginning with the conclusion date;

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- (c) if HMRC have notified P, or the other person, that a review will not be undertaken, an appeal may be made only if the appeal tribunal gives permission to do so.
- (5) In a case where paragraph 7(8) applies, an appeal may be made at any time from the end of the period specified in paragraph 7(6) to the date 30 days after the conclusion date.
- (6) An appeal may be made after the end of the period specified in sub-paragraph (1), (3)(b), (4)(b) or (5) if the appeal tribunal gives permission to do so.
- (7) In this paragraph “conclusion date” means the date of the document notifying the conclusions of the review.

Commencement Information

I10 Sch. 10 para. 10 in force at 6.4.2018 by S.I. 2018/464, art. 2(e)

Appeals: further provision

- 11 (1) An appeal relating to a decision that an amount of soft drinks industry levy is due from a person may not be considered by the appeal tribunal unless the amount which HMRC have determined to be due has been paid or deposited with them.
- (2) In a case where the amount determined to be payable as soft drinks industry levy has not been paid or deposited an appeal may be considered—
 - (a) if HMRC are satisfied (on the application of the appellant), or
 - (b) if HMRC are not satisfied, the appeal tribunal decides,
 that the requirement to pay or deposit the amount determined would cause the appellant to suffer hardship.
- (3) Notwithstanding the provisions of sections 11 and 13 of the Tribunals, Courts and Enforcement Act 2007 (rights of appeal) the decision of the appeal tribunal as to the issue of hardship is final.

Commencement Information

I11 Sch. 10 para. 11 in force at 6.4.2018 by S.I. 2018/464, art. 2(e)

Determinations on appeal

- 12 On an appeal against a decision mentioned in paragraph 1(a) or (c) to (e), the appeal tribunal may affirm or cancel the decision.

Commencement Information

I12 Sch. 10 para. 12 in force at 6.4.2018 by S.I. 2018/464, art. 2(e)

- 13 On an appeal against a decision mentioned in paragraph 1(f) to (j), the appeal tribunal may—
 - (a) affirm the decision, or

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- (b) substitute for that decision another decision that the Commissioners had power to make.

Commencement Information

I13 Sch. 10 para. 13 in force at 6.4.2018 by S.I. 2018/464, art. 2(e)

- 14 Subject to paragraph 15, on an appeal against a decision mentioned in paragraph 1(b) or (k) to (o), the appeal tribunal may—
- (a) affirm or cancel the decision;
 - (b) substitute for that decision another decision that the Commissioners, or (as the case may be) an officer of Revenue and Customs had power to make;
 - (c) vary the decision;
 - (d) direct that the decision, so far as it remains in force, is to cease to have effect from such time as the tribunal may direct;
 - (e) require HMRC to conduct a review, or a further review, of the decision.

Commencement Information

I14 Sch. 10 para. 14 in force at 6.4.2018 by S.I. 2018/464, art. 2(e)

- 15 (1) On an appeal against a decision mentioned in paragraph 1(k), (n) or (o), the appeal tribunal may allow the appeal only if it considers that—
- (a) the Commissioners could not reasonably have been satisfied that there were grounds for the decision, or
 - (b) if information brought to the attention of the appeal tribunal had been available to the Commissioners at the time the decision was made, the Commissioners could not reasonably have been satisfied that there were grounds for the decision.
- (2) Where sub-paragraph (1) applies in relation to a decision mentioned in paragraph 1(o) (giving of a direction), the direction has effect pending the determination of the appeal.

Commencement Information

I15 Sch. 10 para. 15 in force at 6.4.2018 by S.I. 2018/464, art. 2(e)

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