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*Changes to legislation: There are currently no known outstanding effects  
for the Finance Act 2020, SCHEDULE 8. (See end of Document for details)*

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## SCHEDULES

### SCHEDULE 8

Section 56

#### DIGITAL SERVICES TAX: RETURNS, ENQUIRIES, ASSESSMENTS AND APPEALS

#### PART 1

##### INTRODUCTION

- 1 (1) References in this Schedule—
- (a) to the delivery of a DST return are to the delivery of a return by the responsible member for an accounting period where the return complies with the requirements of paragraph 2(2);
  - (b) to the filing date, in relation to a DST return, are to the last day of the period within which the return must be delivered.
- (2) In this Schedule—
- “relevant person” has the same meaning as in section 47;
  - “tax” means digital services tax;
  - “tribunal” means the First-tier Tribunal, or where determined by or under Tribunal Procedure Rules, the Upper Tribunal.

#### PART 2

##### DST RETURNS

##### *DST returns*

- 2 (1) A DST return for an accounting period must be delivered before the end of one year from the end of the accounting period.
- (2) A DST return must—
- (a) be in the specified form,
  - (b) contain specified information,
  - (c) contain an assessment (“a self-assessment”) of the amount of tax payable by the group for the accounting period (including a breakdown showing the amount of tax payable by each relevant person), and
  - (d) contain a declaration by the person making the return that the return is, to the best of the person's knowledge, correct and complete.
- (3) In this paragraph “specified” means specified in a notice published by HMRC.

##### *Amendment of return by responsible member*

- 3 (1) This paragraph applies where a DST return has been delivered.

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- (2) The responsible member may amend the DST return by notice to HMRC.
- (3) The notice must—
  - (a) be in the specified form, and
  - (b) contain specified information.
- (4) In this paragraph “specified” means specified in a notice published by HMRC.
- (5) No amendment may be made under this paragraph more than 12 months after the filing date.

### PART 3

#### DUTY TO KEEP AND PRESERVE RECORDS

##### *Duty to keep and preserve records*

- 4 (1) This paragraph applies in relation to a group for an accounting period if the responsible member is required by section 56 to deliver a DST return for that period.
- (2) The responsible member must—
  - (a) keep such records as may be needed to enable it to deliver a correct and complete DST return, and
  - (b) preserve those records in accordance with this paragraph.
- (3) The records must be preserved until the end of the relevant day.
- (4) In this paragraph “the relevant day” means—
  - (a) the sixth anniversary of the last day of the accounting period, or
  - (b) such earlier day as may be specified (and different days may be specified for different cases).
- (5) In this paragraph “specified” means specified in a notice published by HMRC.

##### *Preservation of information etc*

- 5 The duty under paragraph 4 to preserve records may be satisfied—
  - (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 a notice published by HMRC.

### PART 4

#### ENQUIRY INTO RETURN

##### *Notice of enquiry*

- 6 (1) An officer of Revenue and Customs may enquire into a DST return if, within the time allowed, the officer gives notice to the responsible member of the officer's intention to do so.

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- (2) The time allowed is—
- (a) if the return was delivered on or before the filing date, up to the end of the period of 12 months after the filing date;
  - (b) if the return was delivered after the filing date, up to and including the quarter day next following the first anniversary of the day on which the return was delivered;
  - (c) if the return is amended under paragraph 3, up to and including the quarter day next following the first anniversary of the day on which the return was amended.

The quarter days are 31 January, 30 April, 31 July and 31 October.

- (3) A return that has been the subject of one notice of enquiry may not be the subject of another, except one given in consequence of an amendment (or another amendment) of the return under paragraph 3.
- (4) A notice under this paragraph is referred to as a “notice of enquiry”.

#### *Scope of enquiry*

- 7 (1) An enquiry extends to anything contained in the return, or required to be contained in the return, including anything that relates—
- (a) to the question of whether tax is chargeable in respect of the accounting period, or
  - (b) to the amount of tax so chargeable.

This is subject to the following exception.

- (2) If the notice of enquiry is given as a result of an amendment of the return under paragraph 3—
- (a) at a time when it is no longer possible to give notice of enquiry under paragraph 6(2)(a) or (b), or
  - (b) after an enquiry into a return has been completed,
- the enquiry into the return is limited to matters to which the amendment relates or that are affected by the amendment.

#### *Amendment of self-assessment during enquiry to prevent loss of tax*

- 8 (1) If at a time when an enquiry is in progress into a DST return an officer of Revenue and Customs forms the opinion—
- (a) that the amount stated in the self-assessment contained in the return as the amount of tax payable is insufficient, and
  - (b) that unless the assessment is immediately amended there is likely to be a loss of tax to the Crown,
- the officer may by notice in writing to the responsible member amend the assessment to make good the deficiency.
- (2) In the case of an enquiry that under paragraph 7(2) is limited to matters arising from an amendment of the return, sub-paragraph (1) applies only so far as the deficiency is attributable to the amendment.

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- (3) For the purposes of this paragraph the period during which an enquiry is in progress is the whole of the period—
- (a) beginning with the day on which notice of enquiry is given, and
  - (b) ending with the day on which the enquiry is completed.

*Amendment of return by responsible member during enquiry*

- 9 (1) This paragraph applies if a DST return is amended under paragraph 3 at a time when an enquiry is in progress into the return.
- (2) The amendment does not restrict the scope of the enquiry but may be taken into account (together with any matters arising) in the enquiry.
- (3) While the enquiry is in progress, so far as the amendment affects the amount stated in the self-assessment as the amount of tax payable, the amendment does not take effect in relation to any matter to which it relates or which is affected by it.
- (4) An amendment whose effect is deferred under sub-paragraph (3) takes effect as follows—
- (a) if the conclusions in a closure notice state either—
    - (i) that the amendment was not taken into account in the enquiry, or
    - (ii) that no amendment of the return is required arising from the enquiry, the amendment takes effect when the closure notice is issued (see paragraph 14);
  - (b) in any other case, the amendment takes effect as part of the amendments made by the closure notice.
- (5) For the purposes of this paragraph the period during which an enquiry is in progress is the whole of the period—
- (a) beginning with the day on which notice of enquiry is given, and
  - (b) ending with the day on which the enquiry is completed.

*Referral of questions to the tribunal during enquiry*

- 10 (1) At any time when an enquiry is in progress into a DST return any question arising in connection with the subject-matter of the enquiry may be referred to the tribunal for determination.
- (2) Notice of referral must be given to the tribunal, jointly by the responsible member and an officer of Revenue and Customs.
- (3) More than one notice of referral may be given under this paragraph in relation to an enquiry.
- (4) For the purposes of this paragraph the period during which an enquiry is in progress is the whole of the period—
- (a) beginning with the day on which notice of enquiry is given, and
  - (b) ending with the day on which the enquiry is completed.

*Withdrawal of notice of referral*

- 11 An officer of Revenue and Customs or the responsible member may withdraw a notice of referral under paragraph 10.

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*Effect of referral on enquiry*

- 12 (1) While proceedings on a referral under paragraph 10 are in progress in relation to an enquiry—
- (a) no closure notice may be given in relation to the enquiry (see paragraph 14), and
  - (b) no application may be made for a direction to give such a notice.
- (2) For the purposes of this paragraph proceedings on a referral are in progress where—
- (a) notice of referral has been given,
  - (b) the notice has not been withdrawn, and
  - (c) the questions referred have not been finally determined.
- (3) For the purposes of sub-paragraph (2)(c) a question referred is finally determined when—
- (a) it has been determined by the tribunal, and
  - (b) there is no further possibility of the determination being varied or set aside (disregarding any power to grant permission to appeal out of time).

*Effect of determination*

- 13 (1) The determination of a question referred to the tribunal under paragraph 10 is binding on the parties to the referral in the same way, and to the same extent, as a decision on a preliminary issue in an appeal.
- (2) The determination must be taken into account by an officer of Revenue and Customs—
- (a) in reaching the officer's conclusions on the enquiry, and
  - (b) in formulating any amendments of the return required to give effect to those conclusions.
- (3) The question determined may not be reopened on an appeal, except to the extent that it could be reopened if it had been determined as a preliminary issue in that appeal.

*Completion of enquiry*

- 14 (1) An enquiry is completed when an officer of Revenue and Customs by notice (a “closure notice”) informs the responsible member that the enquiry is complete and states the conclusions reached in the enquiry.
- (2) A closure notice must either—
- (a) state that in the opinion of an officer of Revenue and Customs no amendment of the return is required, or
  - (b) make the amendments of the return required to give effect to the conclusions stated in the notice.
- (3) A closure notice takes effect when it is issued.

*Direction to complete enquiry*

- 15 (1) The responsible member may apply to the tribunal for a direction that an officer of Revenue and Customs give a closure notice under paragraph 14 within a specified period.

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- (2) The tribunal hearing the application must give a direction unless satisfied that HMRC have reasonable grounds for not giving an enquiry closure notice within a specified period.
- (3) Paragraphs 44 (settling of appeals by agreement) and 51 (tribunal determinations) apply to an application under sub-paragraph (1) as they apply to an appeal under paragraph 33, subject to any necessary modifications.

## PART 5

### HMRC DETERMINATIONS

#### *Determination of tax chargeable if no return delivered*

- 16 (1) An officer of Revenue and Customs may determine to the best of the officer's information and belief the total amount of tax payable by relevant persons for an accounting period ("an HMRC determination") if the conditions in sub-paragraph (2) are met.
- (2) The conditions in this sub-paragraph are met if—
- (a) no DST return for the accounting period has been delivered by the end of the filing date, and
  - (b) the officer has reasonable grounds for believing the responsible member is under a duty to deliver a DST return for the accounting period.
- (3) Notice of an HMRC determination—
- (a) must state the date on which it is issued, and
  - (b) must be served on the responsible member.
- (4) No HMRC determination may be made more than 3 years after the filing date.

#### *Determination to have effect as a self-assessment*

- 17 (1) An HMRC determination has effect for enforcement purposes as if it were a self-assessment (within the meaning of paragraph 2(2)).
- (2) In sub-paragraph (1) "for enforcement purposes" means for the purposes of provisions providing for—
- (a) tax-related penalties,
  - (b) collection and recovery of tax, and
  - (c) interest on overdue tax.
- (3) Nothing in this paragraph affects any liability to a penalty for failure to deliver a return.

#### *Determination superseded by actual self-assessment*

- 18 (1) If, after an HMRC determination has been made, a DST return is delivered for the accounting period, the self-assessment included in the return supersedes the determination.
- (2) Sub-paragraph (1) does not apply to a return delivered—

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- (a) more than 3 years after the day on which the power to make the determination first became exercisable, or
  - (b) more than 12 months after the date of the determination,
- whichever is the later.

(3) Where—

- (a) proceedings have been begun for the recovery of any tax charged by an HMRC determination, and
- (b) before the proceedings are concluded the determination is superseded by a self-assessment,

the proceedings may be continued as if they were proceedings for the recovery of so much of the tax charged by the self-assessment as is due and payable and has not been paid.

(4) Where—

- (a) action is being taken under Part 1 of Schedule 8 to F(No.2)A 2015 (enforcement of deduction from accounts) for the recovery of an amount (“the original amount”) of tax charged by an HMRC determination, and
- (b) before that action is concluded, the determination is superseded by a self-assessment,

that action may be continued as if it were an action for the recovery of so much of the tax charged by the self-assessment as is due and payable, has not been paid and does not exceed the original amount.

## PART 6

### HMRC ASSESSMENTS

#### *Assessments where loss of tax discovered*

- 19 (1) If, in respect of an accounting period of a group, an officer of Revenue and Customs discovers that—

- (a) an amount of tax that ought to have been assessed has not been assessed, or
- (b) an assessment to tax is or has become insufficient,

the officer may make an assessment (a “discovery assessment”) in the amount or further amount which ought in the officer's opinion to be charged in order to make good to the Crown the loss of tax.

- (2) This is subject to the restrictions in paragraph 20.

#### *Restrictions on assessments*

- 20 (1) If a DST return has been delivered in respect of the accounting period, the power to make a discovery assessment—

- (a) may only be made in the two cases specified in sub-paragraphs (2) and (3), and
- (b) may not be made in the circumstances specified in sub-paragraph (5).

- (2) The first case is where the situation mentioned in paragraph 19(1) was brought about carelessly or deliberately on the part of—

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- (a) a relevant person, or
  - (b) a person acting on behalf of a relevant person.
- (3) The second case is where an officer of Revenue and Customs, at the time the officer—
- (a) ceased to be entitled to give a notice of enquiry into the return, or
  - (b) completed an enquiry into the return,
- could not have been reasonably expected, on the basis of the information made available to the officer before that time, to be aware of the situation mentioned in paragraph 19(1).
- (4) For this purpose information is regarded as made available to the officer of Revenue and Customs if—
- (a) it is contained in the DST return for the accounting period in question or either of the two immediately preceding accounting periods,
  - (b) it is contained in any documents produced or information provided by the responsible member for the purposes of an enquiry into any such return, or
  - (c) it is information the existence of which, and the relevance of which as regards the situation mentioned in paragraph 19(1)—
    - (i) could reasonably be expected to be inferred by the officer of Revenue and Customs from information falling within paragraph (a) or (b), or
    - (ii) are notified in writing to an officer of Revenue and Customs by the responsible member or another person acting on the responsible member's behalf.
- (5) No discovery assessment may be made if—
- (a) the situation mentioned in paragraph 19(1) is attributable to a mistake in the return as to the basis on which the tax liability ought to have been calculated, and
  - (b) the return was in fact made on the basis or in accordance with the practice generally prevailing at the time it was made.

*Time limits for discovery assessments*

- 21 (1) The general rule is that no discovery assessment may be made more than 4 years after the end of the accounting period to which it relates.
- (2) An assessment in a case involving a loss of tax brought about carelessly by a relevant person (or a person acting on their behalf) may be made at any time not more than 6 years after the end of the accounting period to which it relates.
- (3) An assessment in a case involving a loss of tax—
- (a) brought about deliberately by a relevant person (or a person acting on their behalf), or
  - (b) attributable to a failure by the responsible member to comply with an obligation under section 54,
- may be made at any time not more than 20 years after the end of the accounting period to which it relates.



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*Assessment procedure etc*

- 22 (1) Where notice of a discovery assessment is issued, the notice must be served on the responsible member.
- (2) The notice must state—
- (a) the tax due,
  - (b) the date on which the notice is issued, and
  - (c) the time within which any appeal against the assessment must be made.
- (3) After notice of the assessment has been served under this paragraph, the assessment may not be altered except as provided for by or under this Part of this Act.
- (4) Where an officer of Revenue and Customs has—
- (a) decided to make an assessment to tax, and
  - (b) taken all other decisions needed for arriving at the amount of the assessment,
- the officer may entrust to some other officer of Revenue and Customs the responsibility for completing the assessing procedure, whether by means involving the use of a computer or otherwise, including responsibility for serving notice of the assessment.

*Liability to amounts charged by way of discovery assessment*

- 23 (1) This paragraph applies where—
- (a) notice of a discovery assessment has been issued under paragraph 22, and
  - (b) no appeal has been brought against the assessment under paragraph 33(1)(c).
- (2) The responsible member is liable to the tax due, subject as follows.
- (3) The responsible member may make a request to an officer of Revenue and Customs for one or more other relevant persons to be liable to the tax due (or any part of it).
- (4) The request must be made within 30 days of the date of issue of the notice of assessment.
- (5) Within 30 days of receiving the request, the officer must—
- (a) either agree to the request or refuse it,
  - (b) notify the responsible member of the decision, and
  - (c) if the officer agrees to the request, give effect to it by making all necessary adjustments.
- (6) An officer may not agree to the request unless satisfied it is reasonable in all the circumstances.
- (7) A request or notification under this paragraph must be in writing.

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## PART 7

### RELIEF IN CASE OF OVERPAID TAX

#### *Claim for relief for overpaid tax*

- 24 (1) This paragraph applies where, in relation to a group, an amount has been paid by way of tax for an accounting period which was not tax due.
- (2) The responsible member may make a claim to the Commissioners for repayment of the amount.
- (3) The Commissioners must give effect to such a claim; but this is subject to—
- (a) paragraph 26 (cases where no liability to give effect to claim), and
  - (b) paragraph 27 (power to enquire into claims).
- (4) Except as provided for by or under this Part of this Act, the Commissioners are not liable to repay any amount paid by way of tax by reason of the fact it was not tax due.
- (5) This paragraph is to be read with paragraph 25.

#### *Making a claim*

- 25 (1) A claim under paragraph 24 may not be made—
- (a) if the amount paid is excessive by reason of a mistake in a DST return or returns, more than 4 years after the end of the accounting period to which the return (or, if more than one, the first return) relates, and
  - (b) otherwise, more than 4 years after the end of the accounting period in respect of which the amount was paid.
- (2) A claim must—
- (a) be in the specified form, and
  - (b) contain specified information.
- (3) A claim may not be made by being included in a DST return.
- (4) In this paragraph “specified” means specified in a notice published by HMRC.

#### *Cases in which Commissioners not liable to give effect to claim*

- 26 (1) If, or to the extent that, a claim under paragraph 24 falls within any of Cases A to D, the Commissioners are not liable to give effect to the claim.
- (2) Case A is where, in relation to the group, there is unpaid DST liability for the accounting period.
- (3) Case B is where the responsible member is or will be able to seek relief by taking other steps under this Part of this Act.
- (4) Case C is where the responsible member—
- (a) could have sought relief by taking such steps within a period that has now expired, and
  - (b) knew, or ought reasonably to have known, before the end of that period that such relief was available.

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- (5) Case D is where—
- (a) the amount paid is excessive by reason of a mistake in calculating the amount of tax payable by the group for the accounting period, and
  - (b) the amount was calculated in accordance with the practice generally prevailing at the time.
- (6) In this paragraph “DST liability” has the same meaning as in section 66.

*Power to enquire into claims*

- 27 (1) An officer of Revenue and Customs may enquire into a claim under paragraph 24 if the officer gives notice to the responsible member of the officer's intention to do within the time allowed.
- (2) The time allowed is the period ending with the quarter day next following the first anniversary of the day on which the claim was made.
- The quarter days are 31 January, 30 April, 31 July and 31 October.
- (3) A claim enquired into under sub-paragraph (1) may not be the subject of a further notice under that sub-paragraph.

*Completion of enquiry into claim etc*

- 28 (1) An enquiry under paragraph 27 is completed when the officer by notice (a “closure notice”) informs the responsible member that the enquiry is complete and states the conclusions reached in the enquiry.
- (2) A closure notice must either—
- (a) state that in the opinion of an officer of Revenue and Customs no amendment of the claim is required, or
  - (b) make the amendments of the claim required to give effect to the conclusions stated in the notice.
- (3) A closure notice takes effect when it is issued.
- (4) The officer must give effect to any amendments made by the closure notice by making such adjustments as may be necessary whether—
- (a) by way of assessment, or
  - (b) by discharge or repayment of tax.
- (5) The adjustments must be made within 30 days of the date of issue of the closure notice.
- (6) Paragraph 15 (direction to complete enquiry) applies in relation to an enquiry under paragraph 27 as it applies in relation to an enquiry under paragraph 6.

*Assessment for excessive repayment etc*

- 29 (1) This paragraph applies where—
- (a) an amount has been paid by way of a repayment of tax, and
  - (b) the amount paid exceeded the amount which the Commissioners were liable at that time to repay.

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- (2) The Commissioners may—
- (a) to the best of their judgment, assess the amount of the excess, and
  - (b) notify the amount to the responsible member.

#### *Supplementary assessments*

- 30 (1) This paragraph applies where—
- (a) an assessment has been notified under paragraph 29, and
  - (b) it appears to the Commissioners that the amount which ought to have been assessed as due exceeds the amount that has already been assessed.
- (2) The Commissioners may—
- (a) on or before the last day on which the assessment under paragraph 29 could have been made, make a supplementary assessment of the amount of tax due, and
  - (b) notify the amount to the responsible member.

#### *Further provision about assessments under paragraphs 29 and 30*

- 31 (1) An amount assessed and notified under paragraph 29 or 30 counts as a liability to digital services tax for the purposes of this Part of this Act.
- (2) But sub-paragraph (1) does not have effect if, or to the extent that, the assessment has been withdrawn or reduced.

#### *Time limits for assessments*

- 32 An assessment under paragraph 29 or 30 may not be made more than 4 years after the end of the accounting period in which evidence of facts sufficient in the opinion of the Commissioners to justify making the assessment comes to their knowledge.

## PART 8

### APPEALS AGAINST HMRC DECISIONS ON TAX

#### *Right of appeal*

- 33 (1) An appeal may be brought against—
- (a) an amendment of a DST return under paragraph 8 (amendment during enquiry to prevent loss of tax);
  - (b) an amendment made by a closure notice under paragraph 14;
  - (c) a discovery assessment (under paragraph 19);
  - (d) an amendment made by a closure notice under paragraph 28;
  - (e) an assessment made under paragraph 29 or 30.
- (2) Any such appeal is to be brought by the responsible member (“the appellant”).
- (3) If an appeal under sub-paragraph (1)(a) against an amendment of a self-assessment is made while an enquiry into the return is in progress none of the steps mentioned in paragraph 36(2)(a) to (c) may be taken in relation to the appeal until the enquiry is completed.

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*Notice of appeal*

- 34 (1) Notice of appeal under paragraph 33 must be given to HMRC—
- (a) in writing,
  - (b) within 30 days after the specified date.
- (2) In sub-paragraph (1) “specified date” means—
- (a) in relation to an appeal under paragraph 33(1)(a), the date on which the notice of amendment was issued;
  - (b) in relation to an appeal under paragraph 33(1)(b) or (d), the date on which the closure notice was issued;
  - (c) in relation to an appeal under paragraph 33(1)(c) or (e), the date on which the notice of assessment was issued.
- (3) The notice of appeal must specify the grounds of appeal.

*Late notice of appeal*

- 35 (1) This paragraph applies in a case where—
- (a) notice of appeal may be given to HMRC under this Schedule, but
  - (b) no notice is given before the relevant time limit.
- (2) Notice may be given after the relevant time limit if—
- (a) HMRC agree, or
  - (b) where HMRC do not agree, the tribunal gives permission.
- (3) HMRC must agree to notice being given after the relevant time limit if the appellant has requested in writing that HMRC do so and HMRC are satisfied—
- (a) that there was a reasonable excuse for not giving the notice before the relevant time limit, and
  - (b) that the request has been made without unreasonable delay.
- (4) If a request of the kind mentioned in sub-paragraph (3) is made, HMRC must notify the appellant whether or not HMRC agree to the request.
- (5) In this paragraph “relevant time limit”, in relation to notice of appeal, means the time before which the notice must be given (disregarding this paragraph).

*Steps that may be taken following notice of appeal*

- 36 (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 37),
  - (b) HMRC may notify the appellant of an offer to review the matter in question (see paragraph 38), or
  - (c) the appellant may notify the appeal to the tribunal.
- (3) This paragraph does not prevent the matter in question from being dealt with in accordance with paragraph 44(1) and (2) (settling of appeals by agreement).

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*Right of appellant to require review*

- 37 (1) If the appellant notifies HMRC that it requires them to review the matter in question, HMRC must—
- (a) notify the appellant of HMRC's view of the matter in question within the relevant period, and
  - (b) review the matter in question in accordance with paragraph 39.
- (2) Sub-paragraph (1) does not apply 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 40 in relation to the matter in question, or
  - (c) the appellant has notified the appeal to the tribunal.
- (3) In this paragraph “the 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.

*Offer of review by HMRC*

- 38 (1) Sub-paragraphs (2) to (5) apply if HMRC notify the appellant of an offer to review the matter in question.
- (2) The notification must include a statement of HMRC's view of the matter in question.
- (3) If the appellant notifies HMRC within the acceptance period that it accepts the offer, HMRC must review the matter in question in accordance with paragraph 39.
- (4) If the appellant does not accept the offer in accordance with sub-paragraph (3)—
- (a) HMRC's view of the matter in question is treated as if it were contained in a settlement agreement (see paragraph 44(1)), but
  - (b) paragraph 44(3) (right to withdraw from agreement) does not apply in relation to that notional agreement.
- (5) 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 42.
- (6) HMRC may not take the action mentioned in sub-paragraph (1) at any time if before that time—
- (a) HMRC have given a notification under this paragraph in relation to the matter in question,
  - (b) the appellant has given a notification under paragraph 37 in relation to the matter in question, or
  - (c) the appellant has notified the appeal to the tribunal.
- (7) 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.

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#### *Nature of review*

- 39 (1) This paragraph applies if HMRC are required by paragraph 37 or 38 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) If HMRC do not give notice of the conclusions of the review within the period specified in sub-paragraph (6), the review is treated as having concluded that HMRC's view of the matter in question 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*

- 40 (1) If HMRC give notice of the conclusions of a review (see paragraph 39)—
- (a) the conclusions are to be treated as if they were contained in a settlement agreement (see paragraph 44(1)), but
  - (b) paragraph 44(3) (withdrawal from agreement) does not apply in relation to that notional agreement.
- (2) Sub-paragraph (1) does not apply to the matter in question if, or to the extent that, the appellant notifies the appeal to the tribunal (see paragraphs 41 and 42).

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*Notifying appeal to tribunal after appellant has required review*

- 41 (1) Where HMRC have notified an appellant under paragraph 37(1)(a) of their view of a matter to which an appeal under paragraph 33 relates, the appellant—
- (a) may not notify the appeal to the tribunal before the beginning of the post-review period;
  - (b) may notify the appeal to the tribunal after the end of that period only if the tribunal gives permission.
- (2) Except where sub-paragraph (3) applies, the post-review period is 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 39(6).
- (3) If the period specified in paragraph 39(6) ends without HMRC having given notice of the conclusions of the review, the post-review period is the period that—
- (a) begins with the day following the last day of the period specified in paragraph 39(6), and
  - (b) ends 30 days after the date of the document in which HMRC give notice of the conclusions of the review in accordance with paragraph 39(9).

*Notifying appeal to tribunal after HMRC have offered review*

- 42 (1) Where HMRC have offered to review the matter to which a notice of an appeal under paragraph 33 relates, the right of the appellant at any time to notify the appeal to the tribunal depends on whether or not the appellant has accepted the offer at that time.
- (2) If the appellant has accepted the offer, the appellant—
- (a) may not notify the appeal to the tribunal before the beginning of the post-review period;
  - (b) may notify the appeal to the tribunal after the end of that period only if the tribunal gives permission.
- (3) If the appellant has not accepted the offer, the appellant—
- (a) may notify the appeal to the tribunal within the acceptance period;
  - (b) may notify the appeal to the tribunal after the end of that period only if the tribunal gives permission.
- (4) In this paragraph—
- (a) “acceptance period” has the same meaning as in paragraph 38;
  - (b) “post-review period” has the same meaning as in paragraph 41.

*Interpretation of paragraphs 36 to 42*

- 43 (1) In paragraphs 36 to 42—
- (a) “matter in question” means the matter to which an appeal relates;
  - (b) a reference to a notification is to a notification in writing.
- (2) In paragraphs 36 to 42, 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 37(1)(a);
  - (b) notification by HMRC of an offer of review (and of their view of the matter) under paragraph 38;
  - (c) notification of the conclusions of a review under paragraph 39(6) or (9).



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- (3) But if a notification falling within any of paragraphs (a) to (c) of sub-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.

*Settling of appeals by agreement*

- 44 (1) In relation to an appeal of which notice has been given under paragraph 34, “settlement agreement” means an agreement in writing between the appellant and an officer of Revenue and Customs that is—
- (a) entered into before the appeal is determined, and
  - (b) to the effect that the decision appealed against should be upheld without variation, varied in a particular manner or discharged or cancelled.
- (2) Where a settlement agreement is entered into in relation to an appeal, the consequences are to be the same (for all purposes) as if, at the time the agreement was entered into, the tribunal had decided the appeal and had upheld the decision without variation, varied it in that manner or discharged or cancelled it, as the case may be.
- (3) Sub-paragraph (2) does not apply if, within 30 days beginning with the date on which the settlement agreement was entered into, the appellant gives notice in writing to HMRC that it wishes to withdraw from the agreement.
- (4) Sub-paragraph (5) applies where notice of an appeal has been given under paragraph 34 and—
- (a) the appellant notifies HMRC, orally or in writing, that the appellant does not wish to proceed with the appeal, and
  - (b) HMRC do not, within 30 days after that notification, give the appellant notice in writing indicating that they are unwilling that the appeal should be withdrawn.
- (5) Sub-paragraphs (1) to (3) have effect as if, at the date of the appellant's notification, the appellant and an officer of Revenue and Customs had agreed that the decision under appeal should be upheld without variation.

*Appeal does not postpone recovery of tax*

- 45 (1) Where there is an appeal under paragraph 33, the tax in question remains due and payable as if there had been no appeal.
- (2) That is subject to paragraphs 46 and 47.

*Application for payment of tax to be postponed*

- 46 (1) If the appellant has grounds for believing that the amendment or assessment overcharges a relevant person to tax, the appellant may—
- (a) first apply by notice in writing to HMRC within 30 days after the specified date for a determination by them of the amount of tax the payment of which should be postponed pending the determination of the appeal, and
  - (b) if the appellant does not agree with a determination made by HMRC under paragraph (a), refer the application for postponement to the tribunal within 30 days from the date of the document notifying HMRC's determination.

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An application under paragraph (a) must state the amount believed to be overcharged to tax and the grounds for that belief.

- (2) An application under sub-paragraph (1) may be made more than 30 days after the specified date if there is a change in the circumstances of the case as a result of which the appellant has grounds for believing that the relevant person is overcharged to tax by the decision appealed against.
- (3) If, after an application under sub-paragraph (1) has been determined, there is a change in the circumstances of the case as a result of which either party has grounds for believing that the amount determined has become either excessive or insufficient, that party may (if the parties cannot agree on a revised determination) apply to the tribunal for a revised determination of that amount.
- (4) An application under sub-paragraph (3) may be made at any time before the determination of the appeal.
- (5) Paragraphs 35 (late notice of appeal) and 44 (settling of appeals by agreement) apply to an application under this paragraph as they apply to an appeal under paragraph 33, subject to any necessary modifications.
- (6) The amount of tax of which payment is to be postponed pending the determination of the appeal is the amount (if any) by which it appears that there are reasonable grounds for believing that the relevant person is overcharged.
- (7) A decision of the tribunal under this paragraph is final and conclusive (despite the provisions of sections 11 and 13 of the Tribunals, Courts and Enforcement Act 2007).
- (8) In this paragraph “specified date” has the meaning given by paragraph 34.

*Agreement to postpone payment of tax*

- 47 (1) If the appellant and HMRC agree that payment of an amount of tax should be postponed pending the determination of the appeal, the consequences are to be the same (for all purposes) as if the tribunal had, at the time when the agreement was entered into, made a direction to the same effect as the agreement.

This is without prejudice to the making of a further agreement or further direction.

- (2) Where the agreement is not in writing—
  - (a) sub-paragraph (1) does not apply unless the fact that an agreement was entered into, and the terms agreed, are confirmed by notice in writing given by HMRC to the appellant or by the appellant to HMRC, and
  - (b) the reference in sub-paragraph (1) to the time when the agreement was entered into is to be read as a reference to the time when notice of confirmation was given.
- (3) References in this paragraph to an agreement being entered into with an appellant, and to the giving of notice to or by the appellant, include references to an agreement being entered into, or notice being given to or by, a person acting on behalf of the appellant in relation to the appeal.

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*Assessments and self-assessments*

- 48 (1) This paragraph applies where an appeal under paragraph 33 has been notified to the tribunal.
- (2) If the tribunal decides that a relevant person is overcharged by a self-assessment or any other assessment, the assessment must be reduced accordingly.
- (3) If the tribunal decides that a relevant person is undercharged to tax by a self-assessment or any other assessment, the assessment must be increased accordingly.
- (4) In a case where neither sub-paragraph (2) or (3) apply, the assessment is to stand good.

*Payment of tax where appeal has been determined*

- 49 (1) This paragraph applies where an appeal under paragraph 33 has been notified to the tribunal.
- (2) On the determination of the appeal, any tax overpaid must be repaid.
- (3) On the determination of the appeal, section 51 has effect in relation to any relevant tax.
- (4) The reference to “relevant tax” is to any tax payable in accordance with the determination, so far as it is tax—
- (a) the payment of which had been postponed, or
  - (b) which would not have been charged by the amendment or assessment if there had been no appeal.

*Payment of tax where there is a further appeal*

- 50 (1) Where a party to an appeal to the tribunal under paragraph 33 makes a further appeal, tax is to be payable or repayable in accordance with the determination of the tribunal or court (as the case may be), even though the further appeal is pending.
- (2) But if the amount charged by the assessment is altered by the order or judgment of the Upper Tribunal or court, then—
- (a) if too much tax has been paid, the amount overpaid must be refunded, with any interest allowed by the order or judgment, and
  - (b) if too little tax has been charged, section 51 has effect in relation to the amount undercharged.

*Tribunal determinations*

- 51 The determination of the tribunal in relation to any proceedings under this Part of this Schedule is final and conclusive except as otherwise provided in sections 9 to 14 of the Tribunals, Courts and Enforcement Act 2007 (or in this Part of this Act).

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## PART 9

### PENALTIES

#### *Failure to deliver return: flat-rate penalty*

- 52 (1) A person who is required to file a DST return and fails to do so by the filing date is liable to a penalty under this paragraph.

The person may also be liable to a penalty under paragraph 53 (tax-related penalties).

- (2) The penalty is—
- (a) £100, if the return is delivered within 3 months after the filing date;
  - (b) £200, in any other case.
- (3) The amounts are increased to £500 and £1,000 (respectively) for a third successive failure.
- (4) For this purpose, a “third successive failure” occurs where—
- (a) the duty under section 56 (duty to file returns) applies in relation to a group for 3 successive accounting periods,
  - (b) a person was liable to a penalty under this paragraph in respect of each of the first 2 accounting periods, and
  - (c) a person is liable to a penalty under this paragraph in respect of the third accounting period.

#### *Failure to deliver return: tax-related penalty*

- 53 (1) A person who is required to file a DST return for an accounting period and fails to do so within 18 months from the end of that period is liable to a penalty under this paragraph.

This is in addition to any penalty under paragraph 52 (flat-rate penalty).

- (2) The penalty is—
- (a) 10% of the unpaid tax, if the return is filed within 2 years from the end of the accounting period;
  - (b) 20% of the unpaid tax, in any other case.
- (3) The “unpaid tax” means the total amount of tax payable by members of the group for the accounting period which remains unpaid on the date when the liability to the penalty under this paragraph arises.

#### *Failure to deliver a return: reasonable excuse*

- 54 (1) Liability to a penalty under paragraph 52 or 53 in relation to a failure to make a return does not arise if the person (“P”) satisfies HMRC or (on appeal) the tribunal that there is a reasonable excuse for the failure.

- (2) For that purpose—
- (a) an insufficiency of funds is not a reasonable excuse,
  - (b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure, and

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- (c) where P had a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

*Failure to keep and preserve records: penalty*

- 55
- (1) A person who fails to comply with paragraph 4 in relation to an accounting period is liable to a penalty not exceeding £3,000, subject to the following exception.
  - (2) No penalty is incurred if HMRC are satisfied that any facts which they reasonably require to be proved, and which would have been proved by the records, are proved by other documentary evidence provided to HMRC.

*Assessment of penalty, etc*

- 56
- (1) If a person is liable to a penalty under this Part of this Schedule, HMRC must—
    - (a) assess the penalty, and
    - (b) notify the person.
  - (2) The assessment of a penalty—
    - (a) is to be treated for procedural purposes in the same way as an assessment to tax (except in respect of a matter expressly provided for by this Schedule),
    - (b) may be enforced as if it were an assessment to tax, and
    - (c) may be combined with an assessment to tax.
  - (3) A supplementary assessment may be made in respect of a penalty if an earlier assessment is based on an amount of tax due and payable that is found by HMRC to be an underestimate or insufficient.
  - (4) Sub-paragraph (5) applies if—
    - (a) an assessment in respect of a penalty is based on a liability to tax that would have been shown in a return, and
    - (b) that liability is found by HMRC to be excessive.
  - (5) HMRC may by notice amend the assessment so it is based on the correct amount.
  - (6) An amendment under sub-paragraph (5)—
    - (a) does not affect when the penalty must be paid;
    - (b) may be made after the last day on which the assessment in question could have been made (under sub-paragraph (7)).
  - (7) An assessment of a penalty must be made before the end of the period of 12 months beginning with—
    - (a) the end of the appeal period for the assessment of the liability to tax which would have been shown in the return, or
    - (b) if there is no such assessment, the date on which that liability is ascertained or it is ascertained that the liability is nil.
  - (8) In sub-paragraph (7) “appeal period” means the period during which—
    - (a) an appeal could be brought, or
    - (b) an appeal that has been brought has not been determined or withdrawn.

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- (9) A penalty must be paid before the end of the period of 30 days beginning with the day on which notification of the penalty is issued.

*Special reduction*

- 57 (1) If HMRC think it right because of special circumstances, they may reduce a penalty under this Part of this Schedule.
- (2) In sub-paragraph (1) “special circumstances” does not include—
- (a) ability to pay, or
  - (b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another.
- (3) In sub-paragraph (1) the reference to reducing a penalty includes a reference to—
- (a) staying a penalty, and
  - (b) agreeing a compromise in relation to proceedings in respect of a penalty.

*Right to appeal against penalty*

- 58 A person may appeal against—
- (a) a decision of HMRC that a penalty under this Part of this Schedule is payable by the person, or
  - (b) a decision of HMRC as to the amount of any such penalty.

*Procedure on appeal against penalty*

- 59 (1) Part 8 of this Schedule (apart from paragraphs 33, 45 to 47, and 49) applies in relation to an appeal under paragraph 58 as it applies in relation to an appeal under paragraph 33.
- (2) On an appeal under paragraph 58, payment of the penalty is postponed pending determination of the appeal.
- (3) On an appeal under paragraph 58(a) that is notified to the tribunal, the tribunal may confirm or cancel the decision.
- (4) On an appeal under paragraph 58(b) that is notified to the tribunal, the tribunal may—
- (a) confirm the decision, or
  - (b) substitute for the decision another decision that HMRC had power to make.
- (5) If the tribunal substitutes its decision for HMRC's, the tribunal may rely on paragraph 57—
- (a) to the same extent as HMRC (which may mean applying the same percentage reduction as HMRC to a different starting point), or
  - (b) to a different extent, but only if the tribunal thinks that HMRC's decision in respect of the application of that paragraph was flawed.
- (6) In sub-paragraph (5)(b) “flawed” means flawed when considered in the light of the principles applicable in proceedings for judicial review.
- (7) On determination of an appeal under paragraph 58, where a penalty is payable it is to be paid before the end of 30 days beginning with the day on which the determination was issued.

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*Payments in respect of penalties*

- 60 (1) This paragraph applies if—
- (a) a person liable to a penalty under this Part of this Schedule has an agreement in relation to the penalty with one or more companies within the charge to corporation tax, and
  - (b) as a result of the agreement, the person receives a payment or payments in respect of the penalty that do not, in total, exceed the amount of the penalty.
- (2) The payment—
- (a) is not to be taken into account in calculating the profits for corporation tax purposes of either the person or the company making the payment, and
  - (b) is not to be regarded as a distribution for corporation tax purposes.

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