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## SCHEDULES

### SCHEDULE 8

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

#### 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.

###### *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—

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- (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).

*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.

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*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.

*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—

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- (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).

*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.

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- (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).
- (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—

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- (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.

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).

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(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.

*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.

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*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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