

SCHEDULE 1

Consequential Amendments and Supplemental Provisions – Primary Legislation

Value Added Tax Act 1994

223. After section 85 insert—

“85A Payment of tax on determination of appeal

(1) This section applies where the tribunal has determined an appeal under section 83.

(2) Where on the appeal the tribunal has determined that—

- (a) the whole or part of any disputed amount paid or deposited is not due, or
- (b) the whole or part of any VAT credit due to the appellant has not been paid,

so much of that amount, or of that credit, as the tribunal determines not to be due or not to have been paid shall be paid or repaid with interest at the rate applicable under section 197 of the Finance Act 1996⁽¹⁾.

(3) Where on the appeal the tribunal has determined that—

- (a) the whole or part of any disputed amount not paid or deposited is due, or
- (b) the whole or part of any VAT credit paid was not payable,

so much of that amount, or of that credit, as the tribunal determines to be due or not payable shall be paid or repaid to HMRC with interest at the rate applicable under section 197 of the Finance Act 1996.

(4) Interest under subsection (3) shall be paid without any deduction of income tax.

(5) Nothing in this section requires HMRC to pay interest—

- (a) on any amount which falls to be increased by a supplement under section 79 (repayment supplement in respect of certain delayed payments or refunds); or
- (b) where an amount is increased under that section, on so much of the increased amount as represents the supplement.

85B Payment of tax where there is a further appeal

(1) Where a party makes a further appeal, notwithstanding that the further appeal is pending, value added tax or VAT credits, or a credit of overstated or overpaid value added tax shall be payable or repayable in accordance with the determination of the tribunal or court against which the further appeal is made.

(2) But if the amount payable or repayable is altered by the order or judgment of the tribunal or court on the further appeal—

- (a) if too much value added tax has been paid or the whole or part of any VAT credit due to the appellant has not been paid the amount overpaid or not paid shall be refunded with such interest, if any, as the tribunal or court may allow; and
- (b) if too little value added tax has been charged or the whole or part of any VAT credit paid was not payable so much of the amount as the tribunal or court determines to be due or not payable shall be due or repayable, as appropriate, at the expiration of a period of thirty days beginning with the date on which HMRC issue to the

(1) 1996 c. 8.

Status: This is the original version (as it was originally made).

other party a notice of the total amount payable in accordance with the order or judgment of that tribunal or court.

(3) If, on the application of HMRC, the relevant tribunal or court considers it necessary for the protection of the revenue, subsection (1) shall not apply and the relevant tribunal or court may—

- (a) give permission to withhold any payment or repayment; or
- (b) require the provision of adequate security before payment or repayment is made.

(4) If, on the application of the original appellant, HMRC are satisfied that financial extremity might be reasonably expected to result if payment or repayment is required or withheld as appropriate, HMRC may do one or more of the things listed in subsection (6).

(5) If on the application of the original appellant, the relevant tribunal or court decides that—

- (a) the original appellant has applied to HMRC under subsection (4),
- (b) HMRC have decided that application,
- (c) financial extremity might be reasonably expected to result from that decision by HMRC,

the relevant tribunal or court may replace, vary or supplement the decision by HMRC by doing one or more of the things listed in subsection (6).

(6) These are the things which HMRC or the relevant tribunal or court may do under subsection (4) or (5)—

- (a) decide how much, if any, of the amount under appeal should be paid or repaid as appropriate,
- (b) require the provision of adequate security from the original appellant,
- (c) stay the requirement to pay or repay under subsection (1).

(7) Subsections (3) to (6) cease to have effect when the further appeal has been determined.

(8) In this section—

“adequate security” means security that is of such amount and given in such manner—

- (a) as the tribunal or court may determine (in a case falling within subsection (3) or (5)), or
- (b) as HMRC consider adequate to protect the revenue (in a case falling within subsection (4));

“further appeal” means an appeal against—

- (a) the tribunal’s determination of an appeal under section 83, or
- (b) a decision of the Upper Tribunal or a court that arises (directly or indirectly) from that determination;

“original appellant” means the person who made the appeal to the tribunal under section 83;

“relevant tribunal or court” means the tribunal or court from which permission or leave to appeal is sought.”.