

SCHEDULE 3

Article 6

Transitional and Saving Provisions

General

1.—(1) In this Schedule—

“commencement date” means the date on which this Order comes into force;

“enactment” includes subordinate legislation (within the meaning of the Interpretation Act 1978(1));

“HMRC” means Her Majesty’s Revenue and Customs;

“tribunal” means the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal.

(2) For the purposes of this Schedule there are “current proceedings” if, before the commencement date—

(a) any party has served notice on an existing tribunal for the purpose of beginning proceedings before the existing tribunal, and

(b) the existing tribunal has not concluded proceedings arising by virtue of that notice.

Former VAT and duties tribunals matters (except VAT)

2.—(1) This paragraph applies in relation to the following decisions—

(a) any relevant decision which HMRC notify before the commencement date, unless—

(i) the period to require a review of the decision has expired before that date, or

(ii) a review of the decision has been required before that date;

(b) any relevant review decision which HMRC notify before the commencement date unless—

(i) the period to serve notice of appeal against the decision on an existing tribunal has expired before that date, or

(ii) notice of appeal against the decision has been served on an existing tribunal before that date.

(2) On and after the commencement date, the following enactments continue to apply (subject to sub-paragraphs (3) and (4)) as they applied immediately before that date—

(a) the review and appeal provisions,

(b) rule 4(2) of the Value Added Tax Tribunal Rules 1986(2), and

(c) any other enactments that apply in relation to relevant decisions or relevant review decisions.

(3) Those enactments apply subject to Tribunal Procedure Rules.

(4) Any reference to an existing tribunal is to be substituted with a reference to the tribunal.

(5) Any time period which has started to run before the commencement date and has not expired will continue to apply.

(6) In this paragraph—

(1) 1978 c. 30.

(2) S.I. 1986/590.

“relevant decision” means a decision to which a review and appeal provision applies (apart from a relevant review decision);

“relevant review decision” means a decision—

- (a) that is made on a review of a relevant decision, and
- (b) to which a review and appeal provision applies,

and includes a relevant decision that is treated as having been confirmed under a review and appeal provision.

“review and appeal provisions” means—

- (a) sections 14 to 16 of the Finance Act 1994⁽³⁾,
- (b) sections 59 and 60 of the Finance Act 1994⁽⁴⁾,
- (c) sections 54 to 56 of the Finance Act 1996⁽⁵⁾,
- (d) paragraphs 121 to 123 of Schedule 6 to the Finance Act 2000⁽⁶⁾,
- (e) sections 40 to 42 of the Finance Act 2001⁽⁷⁾,
- (f) sections 33 to 37 of the Finance Act 2003⁽⁸⁾,
- (g) regulations 9 to 13 of the Export (Penalty) Regulations 2003⁽⁹⁾,
- (h) regulations 4 to 7 of the Control of Cash (Penalties) Regulations 2007⁽¹⁰⁾,
- (i) regulations 43 and 44 of the Money Laundering Regulations 2007⁽¹¹⁾, and
- (j) regulations 12 and 13 of the Transfer of Funds (Information on the Payer) Regulations 2007⁽¹²⁾.

3.—(1) This paragraph applies in relation to a relevant decision if, before the commencement date—

- (a) HMRC have notified the relevant decision, and
- (b) a review of the decision has begun under a review and appeal provision (whether or not a relevant review decision has been notified).

(2) On and after the commencement date the following enactments continue to apply (subject to sub-paragraphs (3) and (4)), as they applied immediately before that date—

- (a) the review and appeal provisions,
- (b) rule 4(2) of the VAT Tribunal Rules 1986, and
- (c) any other enactments that apply in relation to relevant decisions or relevant review decisions.

(3) Those enactments apply subject to Tribunal Procedure Rules.

(4) Any reference to an existing tribunal is to be substituted with a reference to the tribunal.

(3) 1994 c. 9. Section 14 was amended by section 20(4) of the Finance Act 1995 (c. 4), paragraph 1(2) of Schedule 6 to the Finance Act 1997 (c. 16), paragraph 10 of Schedule 2 to the Finance Act 1998 (c. 36), section 21(2) of, and paragraph 4(4) of Schedule 1 to, the Finance Act 2002 (c. 23) and section 4(4) of the Finance Act 2004 (c. 12). Section 16 was amended by section 16(3) of the Finance Act 1995, paragraph 11 of Schedule 2 to the Finance Act 1998 and paragraph 16 of Schedule 3 to the Finance Act 2001(c. 9).

(4) Section 59 was amended by paragraph 5 of Schedule 5 to the Finance Act 1995 and section 27(6) of the Finance Act 1997.

(5) 1996 c. 8. Section 54 was amended by section 151(3) of the Finance Act 2008 (c. 9) and S.I. 1996/1529.

(6) 2000 c. 17.

(7) 2001 c. 9.

(8) 2003 c. 14.

(9) S.I. 2003/3102.

(10) S.I. 2007/1509.

(11) S.I. 2007/2157.

(12) S.I. 2007/3298.

(5) Any time period which has started to run before the commencement date and has not expired will continue to apply.

(6) On and after the commencement date, no notification offering or requiring a review may be given under any review and appeal provision or any other enactments that are applicable to the decision as they apply after that date.

(7) In this paragraph “review and appeal provision”, “relevant decision” and “relevant review decision” have the same meaning as in paragraph 2.

Former VAT and duties tribunals matters: VAT

4.—(1) This paragraph applies if, before the commencement date—

- (a) HMRC have notified a decision relating to a matter to which section 83 of the Value Added Tax Act 1994(13) applies, and
- (b) no party has served notice on a VAT and duties tribunal for the purpose of beginning proceedings before such a tribunal in relation to that decision.

(2) On and after the commencement date, the following enactments continue to apply (subject to sub-paragraphs (3) and (4)) as they applied immediately before that date—

- (a) the Value Added Tax Act 1994,
- (b) rule 4(2) of the VAT Tribunal Rules 1986, and
- (c) any other enactments that are applicable to the decision.

(3) Those enactments apply subject to Tribunal Procedure Rules.

(4) Any reference to an existing tribunal is to be substituted with a reference to the tribunal.

(5) Any time period which has started to run before the commencement date and has not expired will continue to apply.

Matters formerly heard by existing tribunals (except VAT and duties tribunals)

5.—(1) This paragraph applies if, before the commencement date—

- (a) a notice of appeal has been given to HMRC; but
- (b) no party has served notice on an existing tribunal for the purpose of beginning proceedings before the existing tribunal in relation to that appeal.

(2) Where the date on which a review is required or offered falls on or before 31 March 2010, the period for HMRC to give notice of their conclusions for the purposes of the relevant provision is to be 90 days (but without prejudice to any power to agree to a different period).

(3) In this paragraph—

“review” means a review under—

- (a) section 49B or 49C of the Taxes Management Act 1970(14), or
- (b) any other enactment which, as amended by this Order, contains provisions corresponding to section 49B or 49C for review to be required or offered;

“relevant provision” means—

(13) 1994 c. 23. Section 83 has been amended by section 31(3) of, and paragraph 12 of Schedule 3 to, the Finance Act 1996 (c. 8), sections 45(2), 46(3) and 47(7) of the Finance Act 1997 (c. 16), paragraphs 3 and 6 of Schedule 2 to the Finance Act 1999 (c. 16), section 137 of the Finance Act 2000 (c. 17), sections 23(2) and 24(4)(b) of the Finance Act 2002 (c. 23), sections 17 and 18(2) of the Finance Act 2003 (c. 14), section 22(3) of, and paragraph 4 of Part 2 of Schedule 2 to, the Finance Act 2004 (c. 12), section 5 of the Finance (No 2) Act 2005 (c. 22), section 21 of the Finance Act 2006 (c. 25), section 93(8) of the Finance Act 2007 (c. 11), article 2 of S.I. 1997/2542, regulation 17 of S.I. 2001/3641, paragraph 1(1) of Schedule 2 to S.I. 2003/3075, paragraph 1 of Schedule 6 to S.I. 2007/2157, article 3 of S.I. 2008/1146 and by paragraph 220 of Schedule 1 to this Order.

(14) 1970 c. 9. Sections 49A to 49I were inserted by paragraph 30 of Schedule 1 to this Order.

- (a) in the case of a review under section 49B or 49C of the Taxes Management Act 1970, section 49E(6) of that Act, or
- (b) in the case of a review under any other enactment amended by this Order, the provision that corresponds to section 49E(6) of the Taxes Management Act 1970 in relation to that review.

Current proceedings

6. Any current proceedings are to continue on and after the commencement date as proceedings before the tribunal.

7.—(1) This paragraph applies to current proceedings that are continued before the tribunal by virtue of paragraph 6.

(2) Where a hearing before an existing tribunal (except for the Commissioners for the general purposes of the income tax) began before the commencement date but was not completed by that date, the tribunal must be comprised for the continuation of that hearing of the person or persons who began it.

(3) The tribunal may give any direction to ensure that proceedings are dealt with fairly and justly and, in particular, may—

- (a) apply any provision in procedural rules which applied to the proceedings before the commencement date; or
- (b) disapply any provision of Tribunal Procedure Rules.

(4) In sub-paragraph (3) “procedural rules” means any provision (whether called rules or not) regulating practice or procedure before an existing tribunal.

(5) Any direction or order made or given in proceedings which is in force immediately before the commencement date remains in force on and after that date as if it were a direction or order of the tribunal relating to proceedings before that tribunal.

(6) A time period which has started to run before the commencement date and which has not expired will continue to apply.

(7) An order for costs may only be made if, and to the extent that, an order could have been made before the commencement date (on the assumption, in the case of costs actually incurred after that date, that they had been incurred before that date).

Cases to be remitted by courts

8. Any case to be remitted by a court on or after the commencement date in relation to an existing tribunal shall be remitted to the tribunal.

Decisions of VAT and duties tribunals and courts: interest and payment

9.—(1) This paragraph applies in relation to any decision of a VAT and duties tribunal made before the commencement date.

(2) On and after that date, the following provisions continue to apply as they applied immediately before that date—

- (a) section 84(8) of the Value Added Tax Act 1994 (VAT),
- (b) section 60(6) to (8) of the Finance Act 1994⁽¹⁵⁾ (insurance premium tax),
- (c) paragraphs 8 and 10 of Schedule 6 to the Finance Act 1994 (air passenger duty),

(15) 1994 c. 9.

- (d) section 56(3) to (5) of the Finance Act 1996(16) (landfill tax),
- (e) paragraph 123(4) to (6) of Schedule 6 to the Finance Act 2000(17) (climate change levy),
- (f) section 42(4) to (6) of the Finance Act 2001(18) (aggregates levy),
- (g) paragraph 14(4) of Schedule 3 to the Finance Act 2001 (excise and customs).

10.—(1) This paragraph applies if an appeal from a decision of a VAT and duties tribunal, or from a court, is made before the commencement date.

(2) Section 85B(19) of the Value Added Tax Act 1994 does not apply in relation to that decision.

Decisions of existing tribunals: rights of appeal, reviews and irregularities

11.—(1) This paragraph applies to a decision of an existing tribunal if, immediately before the commencement date—

- (a) an appeal lies to a court from that decision,
- (b) an application may be or has been made to an existing tribunal seeking a review of that decision, or
- (c) the existing tribunal wishes to correct an irregularity.

(2) Except as provided for in sub-paragraph (3), on and after the commencement date such rights of appeal shall lie from the decision as would lie from a decision of the First-tier Tribunal made on or after that date.

(3) Subject to the modifications specified in sub-paragraphs (4) and (5) the following enactments continue to apply for the purposes of a case to be stated, a review, or for correcting an irregularity in respect of any decision of the Commissioners for the general purposes of the income tax made before the commencement date, as if the amendments in this Order had not been made—

- (a) sections 56 and 58 of the Taxes Management Act 1970(20),
- (b) regulations 17 and 20 to 24 of the General Commissioners (Jurisdiction and Procedure) Regulations 1994(21), and
- (c) the General Commissioners of Income Tax (Costs) Regulations 2001(22).

(4) Section 56(6) of the Taxes Management Act 1970(23) is modified so that for “the Commissioners” there is substituted “the tribunal”.

(5) Section 58 of the Taxes Management Act 1970(24) is modified as follows—

- (a) omit subsection (2B); and
- (b) in subsection (2C) omit “or on an appeal under section 56A of this Act”.

(6) In article 4 of the Tribunals, Courts and Enforcement Act 2007 (Commencement No. 6 and Transitional Provisions) Order 2008(25)—

(16) 1996 c. 8.

(17) 2000 c. 17.

(18) 2001 c. 9.

(19) Section 85B was inserted by paragraph 223 of Schedule 1 to this Order.

(20) 1970 c. 9. Section 56 was amended by section 45(3) of the Finance (No. 2) Act 1975 (c. 45), paragraph 6 of Schedule 22 to the Finance Act 1984 (c. 43), section 156(3) of the Finance Act 1989 (c. 26) and S.I. 1994/1813. Section 58 was amended by sections 134(2) and 135 of, and Part 9 of Schedule 14 to, the Finance Act 1988 (c.39), Part 3(4) of Schedule 20 to the Finance Act 1999 (c. 16), paragraph 3 of Schedule 2 to the Capital Allowances Act 2001 (c. 2), Schedule 6 to the Tax Credits Act 2002 (c. 21), paragraph 375 of Schedule 1 to the Income Tax (Trading and Other Income) Act 2005 (c. 5) and S.I. 1994/1813.

(21) S.I. 1994/1812. Regulation 20 was amended by S.I. 1999/3293 and 2005/340.

(22) S.I. 2001/1304.

(23) Section 56(6) was amended by S.I. 1994/1813.

(24) Section 58(2B) and (2C) were inserted by S.I. 1994/1813.

(25) S.I. 2008/2696.

- (a) for “section 56 of the 1970 Act (statement of case for opinion of the High Court)” substitute “sections 56(3) and (11) and 58 of the 1970 Act (statement of case for opinion of the High Court) and regulations 17 and 20 to 24 of the General Commissioners (Jurisdiction and Procedure) Regulations 1994 (review of tribunal’s final determination, stated case procedures and correction of irregularities)”;
- (b) after “commenced” insert “, and the amendments to the 1970 Act and the revocation of the General Commissioners (Jurisdiction and Procedure) Regulations 1994⁽²⁶⁾, the General Commissioners (Jurisdiction and Procedure) (Amendment) Regulations 1999⁽²⁷⁾, the General Commissioners (Jurisdiction and Procedure) (Amendment) Regulations 2005⁽²⁸⁾ and the General Commissioners and Special Commissioners (Jurisdiction and Procedure) (Amendment) Regulations 2007⁽²⁹⁾ (as they relate to the General Commissioners) in the Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 had not been made”.

Existing tribunals – staff

12. Staff appointed to the existing tribunals (except to the Commissioners for the general purposes of the income tax) before the commencement date are, on and after that date, to be treated, for the purpose of any enactment, as if they had been appointed by the Lord Chancellor under section 40(1) of the Tribunals, Courts and Enforcement Act 2007 (tribunal staff and services)⁽³⁰⁾.

Transitional: general

13.—(1) In so far as appropriate in consequence of this Order, a reference in an enactment, instrument or other document to an existing tribunal, or a member or official of an existing tribunal (however expressed) is to be taken to be a reference to the tribunal.

(2) Sub-paragraph (1) does not apply to any reference that is amended by Schedule 1 or 2.

⁽²⁶⁾ S.I. 1994/1812.
⁽²⁷⁾ S.I. 1999/3292.
⁽²⁸⁾ S.I. 2005/340.
⁽²⁹⁾ S.I. 2007/3612.
⁽³⁰⁾ 2007 c. 15.