

*Draft Order laid before Parliament under section 49 of the Tribunals, Courts and Enforcement Act 2007 and section *** of the Finance Act 2008 for approval by resolution of each House of Parliament.*

DRAFT STATUTORY INSTRUMENTS

2008 No.

TRIBUNALS AND INQUIRIES

The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2008

Made - - - - - ***
Coming into force - - - - - ***

The Lord Chancellor and the Treasury make the following Order in exercise of the powers conferred by sections 30 (1) and (4), 31 (1), (2) and (9), and 38 and paragraph 30 of Schedule 5 to, the Tribunals, Courts and Enforcement Act 2007(**a**) and section 119 of the Finance Act 2008(**b**).

A draft of this Order was laid before Parliament and approved by resolution of each House of Parliament in accordance with section 49(5) of the Tribunals, Courts and Enforcement Act 2007 and section 119 of the Finance Act 2008.

Citation and commencement

1.—(1) This Order may be cited as the Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2008 and shall come into force as follows.

(2) This Order comes into force on [the commencement date].

Interpretation

2.—(1) In this Order—

“the Act” means the Tribunals, Courts and Enforcement Act 2007;

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

“HMRC” means Her Majesty’s Revenue and Customs(**d**);

“the relevant changes” has the meaning given by article 4;

“TMA” means the Taxes Management Act 1970(**a**);

(a) 2007 c. 15.

(b) 2008 c. xx.

(c) 1978 c. 30

(d) The functions of the Board of Inland Revenue and the Commissioners of Customs and Excise were transferred to the Commissioners for Revenue and Customs by section 5 of the Commissioners for Revenue and Customs Act 2005 (c. 11). Section 4 of that Act provides that the Commissioners and the officers of Revenue and Customs may together be referred to as Her Majesty’s Revenue and Customs. See also section 50 of that Act in relation to the construction of references to the Commissioners in other enactments.

“tribunal”, unless the context otherwise requires, means a tribunal established under section 3 of the Act (establishment of the First-tier Tribunal and the Upper Tribunal);

“the Taxes Acts” has the meaning given in section 118(1) of TMA; and

“VATA” means the Value Added Tax Act 1994**(b)**.

Transfer of functions of certain tribunals

3.—(1) The functions of the following tribunals are transferred to the First-tier Tribunal and Upper Tribunal with the question as to which of them is to exercise the function in a particular case to be determined by a Chamber President—

- (a) the Commissioner for the special purposes of the Income Tax Acts established under section 4 of the Taxes Management Act 1970;
- (b) the VAT and duties tribunals established under Schedule 12 to the Value Added Tax Act 1994;
- (c) the tribunal established under section 706 of the Income and Corporation Taxes Act 1988; and
- (d) the tribunal established under section 704 of the Income Taxes Act 2007;
- (e) the Commissioner for the general purposes of the income tax established under Section 2 of the Taxes Management Act 1950.

(2) The tribunals listed in article 1(a) to (d) are abolished.

Structure of this Order

4. In connection with the coming into force of the Tribunals Courts and Enforcement Act 2007 and the transfers of functions in article 3 (“the relevant changes”)—

- (a) article 5 provides for consequential amendments to enactments and supplemental provision in connection with the relevant changes;
- (b) article 6 provides for transitional provisions in connection with the relevant changes; and
- (c) article 7 provides for the repeal or revocation of provisions which are no longer necessary.

Consequential amendments to enactments

5. Schedule 1 has effect and contains amendments of enactments in connection with the relevant changes.

Transitional provisions

6. Schedule 2 has effect and contains transitional provisions in connection with the relevant changes.

Revocations and repeals

7.—(1) Schedule 3 has effect.

(2) Part 1 contains repeals in connection with the relevant changes, and Part 2 contains revocations in connection with those changes.

Signed by authority of the Lord Chancellor

Parliamentary Under-Secretary of State
Ministry of Justice

July 2008

(a) 1970 c. 9.
(b) 1994 c. 23.

SCHEDULE 1

Article 5

Consequential Amendments and Supplemental Provisions

Taxes Management Act 1970

- 1.—(1) The Taxes Management Act 1970(a) is amended as follows.
- (2) Omit sections 4 (special commissioners) and 4A (deputy special commissioners).
- (3) Omit section 5 (general and special commissioners).
- (4) Omit section 6(1) and (5) (declarations on taking office).
- (5) In section 28ZA(b) (referral of questions during enquiry)—
- (a) for “the Special Commissioners” wherever occurring substitute “the tribunal”;
- (b) in subparagraph (1) for “their” substitute “its”.
- (6) In section 28ZB(2)(b) and (c) (withdrawal of notice of referral) for “the Special Commissioners” substitute “the tribunal”.
- (7) Omit section 28ZC (regulations with respect to referrals).
- (8) In section 28ZD(3)(a) (effect of referral on enquiry) for “the Special Commissioners” substitute “the tribunal”.
- (9) In section 28ZE(1) (effect of determination) for “the Special Commissioners” substitute “the tribunal”.
- (10) In section 28A (completion of enquiry into personal or trustee return)—
- (a) in subsection (4) for “Commissioners” substitute “tribunal”;
- (b) in subsection (6)—
- (i) for “Commissioners” substitute “tribunal”;
- (ii) omit “they are”.
- (11) In section 28B(c) (completion of enquiry into partnership return)—
- (a) in subsection (5) for “Commissioners” substitute “tribunal”;
- (b) in subsection (7) for “Commissioners” substitute “tribunal” and omit “they are” after “unless”.
- (12) In section 31 (appeals: right of appeal)—
- (a) in subsection (1) after “appeal” insert “to the tribunal”;
- (b) after subsection (1) insert—
- “(1A) The decision to amend a self-assessment made while an enquiry is in progress may not be reviewed under the provisions of section 43D before the completion of the enquiry.”.
- (13) In section 31A(6)(appeals: notice of appeal)(d)—
- (a) for “on the hearing of the appeal” substitute “on a hearing of the appeal”;
- (b) for “the Commissioners” substitute “the tribunal”.

(a) 1970 c. 9.

(b) Sections 28ZA to 28ZE were inserted by section 88 and paragraph 6 of Schedule 29 to the Finance Act 2001(c. 9)

(c) Inserted by section 88 and paragraph 8 of Schedule 29 to the Finance Act 2001.

(d) Section 31A was substituted by section 88 and paragraph 11 of Schedule 29 to the Finance Act 2001.

(14) Omit sections 31B to 31D.

(15) In section 32(2) (double assessment) for “any of the bodies of Commissioners having jurisdiction to hear an appeal against the assessment, or the later of the assessments to which the claim relates” substitute “the tribunal”.

(16) In section 33(4) (error or mistake)(a)—

- (a) for “the Special Commissioners” substitute “the tribunal”;
- (b) for “appeal under section 56A of this Act against the determination of the Special Commissioners” substitute “appeal against the determination of the tribunal”.

(17) In section 33A (error or mistake in partnership return)(b)—

- (a) In subsections (7) and (8) for “the Special Commissioners” substitute “the tribunal”;
- (b) In subsection (8) for “(notwithstanding any provision having effect by virtue of section 56B of this Act)” substitute “(notwithstanding the provisions of TCEA sections 11 and 13).”.

(18) For the heading of Part 5 substitute—

“Reviews and appeals, and other proceedings”.

(19) At the beginning of Part 5 insert the following—

“Reviews”

Offer of review

43D.—(1) If—

- (a) notice of appeal has been given to HMRC but the appeal has not been notified to the tribunal under section 43H; and
 - (b) a determination of the tribunal on the appeal would be capable of further appeal,
- it is open to the appellant (“A”) to notify HMRC that they require a review under this section or to HMRC, by notice, to offer A such a review.

(2) If A notifies HMRC that they require a review, HMRC must, within 30 days from the date that notification is received or such longer period as is reasonable —

- (a) notify A whether there is any change in their view of the matter under appeal; and then
- (b) conduct a review.

(3) If HMRC notify A of an offer of review HMRC must at the same time notify A whether there is any change in their view of the matter under appeal.

(4) This section may only apply once in relation to any appeal.

Appellant’s options

43E.—(1) If a review has been offered under section 43D(1), A may either give notice—

- (a) to HMRC that the offer is accepted, or
- (b) to the tribunal of the appeal under section 43H.

(2) To exercise either option, A must give notice within 30 days from the date of the document containing the notification of the offer.

(3) If A fails to exercise either option, the HMRC view as notified to A under section 43D(3) shall be treated as an agreement for the settlement of the appeal under section 54(1).

(a) Section 33 was substituted by the General and Special Commissioners (Amendment of Enactments) Regulations 1994 (S.I. 1994/1813).

(b) Inserted by sections 196, 199 and paragraph 9 of Schedule 19 to the Finance Act 1994 (c. 9).

(4) The same consequences shall follow for all purposes as would have followed if, on the date that HMRC gave notice of their view under section 43D(3), a tribunal had determined the appeal in accordance with its terms.

(5) Section 54(2) shall not apply for the purposes of an agreement created by subsection (3).

Conduct of review

43F.—(1) Where HMRC undertake a review under section 43D, HMRC must give notice of their conclusions to A within 45 days from the date HMRC notify A of their view under section 43D(2)(a) or (3) or the date of receipt of A's notification under section 43E(2) unless another period has been agreed.

(2) The nature and extent of a review shall be such as appears appropriate to HMRC in the circumstances, having regard in particular to steps taken in reaching their view of the matter, or to resolve disagreement, before the review commenced (whether or not before the notice of appeal was given).

(3) Where HMRC are required to give notice of their conclusions on the review within the period specified in or agreed under subsection (1) but fail to do so, and no longer period is subsequently agreed, the view as notified to A under section 43D(2)(a) or (3) shall be deemed to have been upheld under section 43G(1)(a) and shall be treated as the conclusion of the review for the purpose of section 43G(2), (3) and (4).

Conclusion of review: effect

43G.—(1) A review may conclude that the view as notified to A by HMRC under section 43D(2) or (3) should be—

- (a) upheld,
- (b) varied, or
- (c) cancelled.

(2) The conclusion of the review shall be treated as an agreement for the settlement of the appeal under section 54(1) unless A notifies the tribunal of the appeal under section 43H within the time limits provided in that section.

(3) The same consequences shall follow for all purposes as would have followed if, on the date of the document notifying the review conclusions or, where section 43F(3) applies, on the day after the expiry of the appropriate time limit, a tribunal had determined the appeal in accordance with its terms.

(4) Section 54(2) shall not apply for the purposes of the agreement created by subsection (2).

Notifying the tribunal of an appeal

43H.—(1) A may notify the tribunal of an appeal in relation to which a review may be required or offered under section 43D (1)—

- (a) subject to section 43E(2), if neither a review has been required nor an offer of review accepted, at any time after giving notice of the appeal to HMRC;
- (b) if a review has been required or an offer of review has been accepted, within 30 days from the date of the document notifying the review conclusions; or
- (c) where section 43F(3) applies, within 30 days from the end of the period specified in, or agreed under section 43F(1) or any longer period agreed under section 43F(3).

(2) A may notify the tribunal of an appeal to which subsection (1) does not apply at any time after giving notice of appeal to HMRC.

(3) A tribunal shall not make any order with respect to an appeal to which this section applies until it is notified to the tribunal.

(4) If A accepts HMRC's conclusions on a review in respect of some, but not all of the issues which were the subject of the appeal, then—

- (a) to the extent that A accepts the conclusions, section 43G(3) applies;
- (b) to the extent that A does not accept those conclusions, the issues remain for determination by the tribunal.

(5) A may apply to the tribunal for leave to notify an appeal outside the time limits specified in subsection (1) and section 43E(2) and the tribunal may grant leave.

(6) Any application to the tribunal under subsection (5) must be in writing.

Notice by representatives

43I The references in the preceding provisions of this Part to the giving of notice or notification to or by A include references to the giving of notice or notification to or by, a person acting on behalf of A in relation to the appeal and cognate expressions shall be construed accordingly.

(20) Omit sections 44 to 46D.

(21) For the heading before section 48 (proceedings before Commissioners) substitute—

“Appeal proceedings”.

(22) For section 48(1) substitute—

“(1) In the following provisions of this Part of this Act, unless the context otherwise requires “appeal” means an appeal to a tribunal.”.

(23) For section 49 (proceedings brought out of time) substitute—

“Extending time limits

49.—(1) Leave to notify HMRC of an appeal may be made after the expiry of the relevant time limit.

(2) The application for leave shall be delivered to an officer of Revenue and Customs.

(3) If the officer is satisfied that—

- (a) there was a reasonable excuse for not giving notice of appeal within the time limit, and
- (b) the application was made without unreasonable delay after the excuse ceased,

the officer shall give notification in writing that HMRC consent to the bringing of the appeal out of time.

(4) If not satisfied, the officer shall give notification in writing.

(5) If HMRC have given notification under subsection (4) that they do not consent to an appeal being brought out of time, the tribunal may grant leave to appeal out of time on an application made to them in writing.

(24) Amend section 50 (procedure)(a) as follows—

(a) Section 50 has been amended. Subsections (1) to (5), and part of subsection (6), were repealed by Part 1 of Schedule 2 to S.I. 1994/1813. Subsections (6) and (7) were substituted by paragraph 17(1) of Schedule 19 to the Finance Act 1994(c. 9). Parts of subsections (6) and (7) were repealed by the relevant entries in Part 2(13) of Schedule 33 to the Finance Act 2001(c. 9). Subsection (7A) was inserted by paragraph 7 of Schedule 19 to the Finance Act 1994, and amended by paragraph 30 of Schedule 29 of the Finance Act 2001. Subsection (8) was inserted by section 67(2) and (3) of the Finance (No. 2) Act 1975(c. 45) and amended by paragraph 17 of Schedule 19 to the Finance Act 1994. Paragraph 17 of that Schedule also inserted subsection (9), and paragraph 30 of Schedule 29 to the Finance Act 2001 amended that subsection.

- (a) in subsections (6) to (8) for “the Commissioners”, wherever occurring substitute “the tribunal”;
- (b) in subsection (6) omit “the majority of” and “present at the hearing”;
- (c) in subsection (7A) after “to the extent that appears” for “to them” substitute “to the tribunal”;
- (d) in subsection (8) for “(subsection (6) or (7) above, they may” substitute “(subsection (6) or (7) above the tribunal may”;
- (e) after subsection (9) add—
 - “(10) Subject to the provisions of sections 11 and 13 of TCEA or unless the Taxes Acts provide otherwise, the determination of the First-tier tribunal in any proceedings shall be final and conclusive.”.

(25) Omit section 53.

(26) In section 54(1) (settling of appeals by agreement) for “the Commissioners”, wherever occurring, substitute “the tribunal”.

(27) In section 55 (recovery of tax not postponed)(a)—

- (a) for “Commissioners”, except where express provision is otherwise made, in each place substitute “tribunal”;
- (b) for references to an inspector, wherever occurring, substitute references to an officer of Revenue and Customs;
- (c) in subsection (1) for “This section applies to an appeal to the Commissioners against” substitute “This section applies to appeals at first instance to the tribunal against”;
- (d) for subsection (3) substitute—

“(3) If the appellant has grounds for believing that the amendment or assessment overcharges the appellant to tax, or as a result of the conclusion stated in the closure notice the tax charged on the appellant is excessive, the appellant may—

- (a) first apply by notice in writing to Her Majesty’s Revenue and Customs (HMRC) within 30 days of 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;
- (b) where the appellant and HMRC cannot reach agreement, refer the application for postponement to the tribunal within 30 days from the date of the document notifying HMRC’s decision on the amount to be postponed.

An application under subparagraph (a) or (b) must state the amount believed to be overcharged to tax and the grounds for that belief.”;

- (e) in subsection (3A)(b) after “closure notice” insert “; or where a late appeal has been accepted”;
- (f) in subsection (4) for “Commissioners” substitute “HMRC”;
- (g) in subsection (5)—
 - (i) after “(3) or (4) above” insert “which is referred to the tribunal”; and
 - (ii) omit from “:and where” to “above”.
- (h) in subsection (6) for “the Commissioners” substitute “the tribunal”;
- (i) in subsection (6A)(c)—
 - (i) in paragraph (a) for “the Commissioners shall consider the matters so arising together” substitute “the matters so arising shall be considered together”,

(a) Section 55 was substituted by section 45 of the Finance (No 2) Act 1975 (c. 45).

(b) Inserted by section 68 of the Finance Act 1982 (c. 39).

(c) Inserted by paragraph 8 of Schedule 29 to the Income and Corporation Taxes Act 1988 (c. 1)

- (ii) in paragraph (b) omit “the Commissioners have determined” and after “postponed” insert “has been agreed or determined”;
- (j) for subsections (7) and (8) substitute—
 - “(7) An agreement between the appellant and HMRC as to the amount of tax the payment of which should be postponed pending the determination of the appeal must be confirmed by notice in writing.
 - (8) Where no notice under subsection (7) above has been given, an agreement shall not have effect unless—
 - (a) the fact that the agreement was reached, and
 - (b) the terms of that agreement,
 are confirmed by notice in writing.
 - (8A) References in subsection (6)(a) and (b) above to the time when the agreement was reached shall be construed as references to the time of the giving of the notice of confirmation.”.
- (k) omit subsections (10) and (11).
- (28) For section 56 (statement of case for opinion of the High Court) substitute—

“Payment of tax where there is a further appeal

56.—(1) Where a party to an appeal against an assessment makes a further appeal, notwithstanding that the further appeal is pending, tax shall nevertheless be payable or repayable in accordance with the determination of the tribunal or court as the case may be.

(2) But if the amount charged by the assessment is altered by the order or judgment of the Upper Tribunal or court—

- (a) if too much tax has been paid, the amount overpaid shall be refunded with such interest, if any, as may be allowed by that order or judgment; and
- (b) if too little tax has been charged, the amount undercharged shall be due and payable at the expiration of a period of thirty days beginning with the date on which HMRC issue to the other party a notice of the total amount payable in accordance with the order or judgment.”.

- (29) Omit sections 56A to 56D.
- (30) Amend section 57 (regulations about appeals) as follows.
 - (a) In subsection (1) for “The Board may make regulations” substitute “The Commissioners for Her Majesty’s Revenue and Customs may make regulations”.
 - (b) In subsection (1)(b) for “apart from the regulations” substitute “apart from the Tribunals Procedure Rules”.
 - (c) In subsection (1)(e) for “an inspector or other officer of the Board” (in both places) substitute “an officer of Revenue and Customs”.
- (31) Omit section 58 (proceedings in tax cases in Northern Ireland).
- (32) In section 59C (9) (surcharges on unpaid income tax and capital gains tax)(a)—
 - (a) for “the Commissioners” substitute “the tribunal”;
 - (b) in subsections (9)(a) and (b) omit the words “to them”;
- (33) In section 59DA (4) (claim for repayment in advance of liability being established)(b) for “the Commissioners” substitute “the tribunal”.
- (34) In section 93(c)(failure to make return for income tax and capital gains tax)—

(a) Section 59C was inserted by sections 194, 199(1) and (2)(a) to the Finance Act 1994 (c. 9).

(b) Section 59DA was inserted by paragraph 29 of Schedule 19 to the Finance Act 1998 (c. 36).

(c) Section 93 was substituted by sections 196, 199(1) and 2(a) and paragraph 25 of Schedule 19 to the Finance Act 1994.

- (a) in subsection (3) for “the General or Special Commissioners” substitute “the tribunal”;
- (b) in subsection (8)—
 - (i) for “the Commissioners” substitute “the tribunal”;
 - (ii) in subsection (8) (a) and (b) omit the words “to them”.
- (35) In section 93A(7) (failure to make partnership return)(a)—
 - (a) for “the Commissioners” substitute “the tribunal”;
 - (b) in subsections (7)(a) and (b) omit the words “to them”.
- (36) In section 98B(2B) (European economic interest groupings)(b) for “the General or Special Commissioners so direct” substitute “the tribunal so directs”.
- (37) In section 100B (appeals against penalty determination)(c)—
 - (a) in subsection (2) for “the Commissioners” substitute “the tribunal”;
 - (b) in subsection (2) omit “to them” wherever occurring;
 - (c) omit subsection (3).
- (38) In section 100C (penalty proceedings before Commissioners)—
 - (a) in the heading for “Commissioners” substitute “the tribunal”;
 - (b) in subsection (1) for “the General or Special Commissioners” substitute “the tribunal”;
 - (c) omit subsection (1A);
 - (d) in subsections (2) and (3) for “the Commissioners” substitute “the tribunal”;
 - (e) in subsection (4) for “the High Court or in Scotland, the Court of Session as the Court of Exchequer in Scotland” substitute “the Upper Tribunal”.
- (39) In section 100D (penalty proceedings before court) for “the High Court or in Scotland, the Court of Session as the Court of Exchequer in Scotland” substitute “the Upper Tribunal”.
- (40) In section 101 (evidence for the purposes of proceedings relating to penalties)(d) for “any Commissioners” substitute “the tribunal”.
- (41) In section 103(1) and (4) (time limits for penalties)(e) for “the Commissioners” substitute “the tribunal”.
- (42) In section 112 (loss, destruction or damage to assessments, returns etc)—
 - (a) In subsection (1)—
 - (i) for “the Commissioners, inspectors, collectors and other officers having powers in relation to tax” substitute “HMRC”;
 - (ii) for “the Commissioners having jurisdiction in the case” substitute the tribunal”;
 - (b) omit subsection (2).
- (43) In section 115 (delivery and service of documents)—
 - (a) in subsection (2) for “or by or on behalf of any body of Commissioners” substitute “by or on behalf of the tribunal”;
 - (b) omit subsections (4) and (5).
- (44) In section 118 (interpretation)—
 - (a) omit the definitions of the General Commissioners Regulations and the Special Commissioners Regulations.
 - (b) after the definition of “tax” add—

(a) Section 93A was inserted by sections 196, 199(1), 2(a) and paragraph 25 of Schedule 19 to the Finance Act 1994 (c. 9).
 (b) Section 98B was inserted by paragraphs 3 and 5 of Schedule 11 to the Finance Act 1990 (c. 29) and subsection 2B was substituted by sections 196, 199 and paragraph 30 of Schedule 19 to the Finance Act 1994.
 (c) Sections 100, 100A, 100B, 100C and 100D were substituted for section 100 by section 167 to the Finance Act 1989(c. 26).
 (d) Section 101 was substituted by paragraph 39 of Schedule 19 to the Finance Act 1998 (c.36).
 (e) Section 103 was substituted by section 169 to the Finance Act 1989.

““TCEA” means the Tribunals, Courts and Enforcement Act 2007.”

(c) after the definition of “trade” add—

““tribunal” means a tribunal established under section 3 of TCEA.”.

(d) in subsection (2) for “the Commissioners” substitute “the tribunal”;

(e) in subsection (4) for “any Commissioners” substitute “the tribunal”.

(45) In Schedule 1A (a)(claims etc not included in returns)—

(a) in subparagraph (3) of paragraph 6A(b)—

(i) for “the Commissioners” substitute “the tribunal”;

(ii) omit “to them” from subparagraphs (a) and (b);

(b) in subparagraphs (4) and (5) of paragraph 6A for “the Commissioners” substitute “the tribunal”;

(c) in paragraph 7(5) (c) for “the Commissioners” substitute “the tribunal”;

(d) in paragraph 7(7) for “The Commissioners hearing the application” substitute “The tribunal” and omit “they are”;

(e) in subparagraphs (3) and (4) of paragraph 9 for “the Commissioners” substitute “the tribunal”;

(f) in paragraph 9(5) for “the Commissioners” substitute “the tribunal” and omit “to them”;

(g) omit paragraphs 10 and 11.

(46) Schedule 3 (rules for assigning proceedings to General Commissioners) shall cease to have effect.

(47) In paragraph 4 of Schedule 3A (electronic lodgement of tax returns etc)—

(a) in sub paragraph (6) for “the Special Commissioners” substitute “the tribunal”;

(b) In subparagraph (8) for “The Special Commissioners” substitute “The tribunal” and omit “to them”;

(c) In subparagraph (9)—

(i) for “the Special Commissioners” substitute “the tribunal”;

(ii) for “allow” substitute “allows”;

(iii) for “they” substitute “the tribunal”.

(48) In paragraph 11(6) of Schedule 3A(d) omit “the General or Special Commissioners or”.

Finance Act 1973

2.—(1) The Finance Act 1973(e) is amended as follows.

(2) Omit section 41 (General Commissioners’ divisions).

Finance Act 1975

3.—(1) The Finance Act 1975(f) is amended as follows.

(2) Omit section 57 (appointment of General Commissioners in Scotland).

Customs and Excise Management Act 1979

4.—(1) The Customs and Excise Management Act 1979(a) is amended as follows.

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- (a) Inserted by sections 196, 199 and paragraph 35 of Schedule 19 to the Finance Act 1994 (c. 9).
(b) Paragraph 6A was inserted by paragraph 142 of Schedule 19 to the Finance Act 1998 (c. 26).
(c) Paragraph 7 was substituted by section 88 and paragraph 10 of Schedule 29 to the Finance Act 2001 (c.9).
(d) Inserted by paragraph 2 of Schedule 28 to the Finance Act 1995 (c. 4).
(e) 1973 c.51
(f) 1975 c.7

(2) In section 1 (interpretation) after the definition of “transit shed” add—
““tribunal” means a tribunal established under section 3 of the Tribunals, Courts and Enforcement Act 2007.”.

(3) In section 170A(2) (offence of handling goods subject to unpaid excise duty)(b) for “a VAT and duties tribunal” substitute “the tribunal”.

Tobacco Products Duty Act 1979

5.—(1) The Tobacco Products Duty Act 1979(c) is amended as follows.

(2) In section 7C(4)(d) (penalty for facilitating evasion: penalty notice) for “a VAT and duties tribunal” substitute “the tribunal”.

(3) In section 10(3) (interpretation) after “stores” add “tribunal”.

Income and Corporation Taxes Act 1988

6.—(1) The Income and Corporation Taxes Act (e) is amended as follows.

(2) In section 42(4) for “the Special Commissioners or such body of General Commissioners as may be agreed on by the person to be charged and all persons who have given notice of objection” substitute “the tribunal”.

(3) For section 102(1) (provisions supplementary to sections 100 and 101) substitute—

“(1) Any question arising under section 100(1)(a) or 101(1)(a) shall be determined, for the purpose of computing for any tax purpose the profits of both the trades or, as the case may be, the professions concerned, by the tribunal in like manner as an appeal.”.

(4) In section 152 (notification of taxable amount of certain benefits)—

(a) in subsection (5) for “determination—” substitute “determination by the tribunal”;

(b) omit subsection (5)(c)(i) and (ii).

(5) In section 215(7) and (8) (advance clearance by Board of distributions and payments) for “the Special Commissioners” and “Commissioners” substitute “the tribunal”.

(6) In section 296 (section 294 disapplied where amounts raised total £50,000 or less)(f)—

(a) in subsection (4) for “the appropriate Commissioners” substitute “the tribunal”;

(b) omit subsection (5).

(7) In section 343(10) (company reconstructions without a change of ownership)—

(a) for “for the purposes of the tax of all those companies—” substitute “for the purposes of the tax of all those companies by the tribunal”;

(b) omit paragraphs (a) to (c);

(c) for “any such Commissioners” substitute “the tribunal”;

(d) omit “by the Commissioners who are to make the determination”;

(e) omit “to them”.

(8) In section 376A(6) (the register of qualifying lenders)(g) for “the Special Commissioners” substitute “the tribunal”.

(9) In section 378(3) (supplementary regulations) for “the General Commissioners or the Special Commissioners” substitute “the tribunal”.

(a) 1979 c.2.

(b) Section 170A inserted by section 3 and paragraph 8 of Schedule 2 to the Finance Act 1994 (c. 9).

(c) 1979 c.7.

(d) Section 7C inserted by section 2(1) of the Finance Act 2006 (c. 25).

(e) 1988 c.1.

(f) This section is effectively repealed with effect after 28 November 1994 by section 293(8B) of the Income and Corporation Taxes Act 1988 as inserted by section 66(3) of the Finance Act 1995 (c. 4).

(g) Section 376A inserted by section 142(2) of the Finance Act 1994.

- (10) In section 444A(6) (transfers of business)(a)—
- (a) for “the Special Commissioners who” substitute “the tribunal which”;
 - (b) for “they determine” substitute “it determines”.
- (11) In section 444AZA(5) (transfers of life assurance business: case VI losses of the transferor)(b)—
- (a) for “the Special Commissioners who” substitute “the tribunal which”;
 - (b) for “as they determine appeals” substitute “as an appeal”.
- (12) In section 444ZAB(4) (transfers of life assurance business: case I losses of the transferor)—
- (a) for “the Special Commissioners who” substitute “the tribunal which”;
 - (b) for “as they determine appeals” substitute “as an appeal”.
- (13) In subsections (9), (11) and (12) of section 444AED (clearance: no avoidance or group advantage)(c) for “the Special Commissioners” substitute “the tribunal”.
- (14) In section 461(8) (taxation in respect of other business)(d) for “the Special Commissioners” substitute “the tribunal”.
- (15) In section 461C(5) (taxation in respect of other business: withdrawal of qualifying status from incorporated friendly society) for “the Special Commissioners” substitute “the tribunal”.
- (16) In section 462A(4) (election as to tax exempt business)(e) for “the Commissioners” substitute “the tribunal”.
- (17) In section 465(5) (old societies) for “the Special Commissioners” substitute “the tribunal”.
- (18) In section 506C(8) (sections 506A and 506B: supplemental)(f) for “the Special Commissioners” substitute “the tribunal”.
- (19) In section 552A(9)(k) (tax representatives)(g) for “the Special Commissioners” substitute “the tribunal”.
- (20) In section 584 (relief for unremittable overseas income) omit subsection (9).
- (21) In section 703(10) (cancellation of corporation tax advantage)—
- (a) in paragraph (a) for “the tribunal” substitute “the First-tier Tribunal”;
 - (b) in paragraph (b) for “they determine” substitute “it determines”.
- (22) In section 705 (appeals against Board’s notices under section 703)—
- (a) in subsection (1) for “the Special Commissioners” substitute “the First-tier Tribunal”;
 - (b) omit subsections (2) and (3);
 - (c) in subsection (5)—
 - (i) for “subsections (1)” substitute “subsection (1)”;
 - (ii) omit “to (3)”;
 - (iii) for “the Special Commissioners or the tribunal” substitute “the First-tier Tribunal”.
- (23) Omit sections 705A, 705B and 706.
- (24) In section 709(4)(h) omit “the Special Commissioners”.

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- (a) Section inserted by paragraphs 4 and 7 of Schedule 9 to the Finance Act 1990 (c. 29).
 - (b) Sections 444AZA and 444AZB were inserted by the Insurance Business Transfer Schemes (Amendment of the Corporation Tax Acts) Order 2008 (S.I. 2008/381).
 - (c) Inserted by section 40 and paragraph 8(1) of Schedule 9 to the Finance Act 2007 (c.11).
 - (d) Sections 461A(8) and 461C(5) were substituted by the Financial Services and Markets Act 2001 (Consequential Amendments) (Taxes) Order 2001 (S.I. 2001/3629).
 - (e) Section inserted by paragraph 2 of Schedule 9 to the Finance Act 1991 (c. 31).
 - (f) Section inserted by section 54 of the Finance Act 2006 (c. 25).
 - (g) Section inserted by section 87 of the Finance Act 1998 (c. 36).
 - (h) Section 709 was substituted by section 1027 and paragraphs 1 and 161 of Schedule 1 to the Income Tax Act 2007 (c. 3).

(25) In section 735(5) for “the Commissioners having jurisdiction in the matter” substitute “the tribunal”.

(26) In section 751B (section 751A: supplementary)(a)—

(a) in subsection (5) for “the Special Commissioners” substitute “the tribunal”;

(b) in subsection (7)—

(i) in paragraphs (a) and (b) for “the Special Commissioners are” substitute “the tribunal is” and for “they” substitute “it”;

(ii) in paragraph (c) for “the Special Commissioners” substitute “the tribunal”.

(27) In section 754 (assessment, recovery and postponement of tax)(b)—

(a) in subsection (3) for “that appeal shall be to the Special Commissioners” substitute “and the question is one whose resolution is likely to affect the liability of more than one person under this Chapter in respect of the controlled foreign company concerned, subsection 3B below shall apply”;

(b) omit subsection (3A);

(c) in subsection (3B)—

(i) for “the Special Commissioners” wherever occurring substitute “the tribunal”;

(ii) in paragraph (a) omit “to them”;

(iii) in paragraph (c) for “their” substitute “the tribunal’s”.

(28) In section 783(9) (leased assets: supplemental)

(a) for “for the purposes of the tax of all those persons—” substitute “for the purposes of the tax of all those persons by the tribunal”;

(b) omit paragraphs (a) to (c);

(c) for “and any such Commissioners” substitute “the tribunal”;

(d) omit “by the Commissioners who are to make the determination”;

(e) omit “to them”.

(29) In section 832 (Interpretation of the Corporation Taxes Act) after the definition of “trade” insert—

““tribunal” means a tribunal established under section 3 of the Tribunals, Courts and Enforcement Act 2007.””

(30) In paragraph 21(3) of Schedule 15 (qualifying policies) for “the General Commissioners or, if he so elects, to the Special Commissioners” substitute “the tribunal”.

(31) In paragraph 7 of Schedule 17 (dual resident investment companies) for “the Special Commissioners” substitute “the tribunal”.

(32) In Schedule 27 (distributing funds)—

(a) in paragraph 16 for “the Special Commissioners” substitute “the tribunal”;

(b) in paragraph 19—

(i) in subparagraph (1) for “In any case” substitute “This paragraph applies”;

(ii) for the second part of paragraph (1) substitute—

“(1A) Any person who has been assessed to tax and considers that, if the offshore fund were to be certified as a distributing fund in respect of the accounting period in question, he would be overcharged to tax by the assessment may—

(a) first apply in writing to HMRC within 30 days of the date of the issue of the notice of assessment for a determination by them of the amount of tax the payment of

(a) Inserted by section 48 and paragraph 5 of Schedule 15 to the Finance Act 2007 (c. 11).

(b) Section 754 (3B) inserted by paragraph 9 of Schedule 17 to the Finance Act 1998 (c. 36).

which should be postponed pending the determination of the question whether the fund should be so certified;

- (b) where the applicant and HMRC cannot reach agreement, refer the application for postponement to the tribunal within 30 days of the date when HMRC inform the applicant of their decision on the amount to be postponed.”.

- (iii) in subparagraph (2) for “A” substitute “An”; omit “notice of” and for “(1)” substitute “(1A)”.

- (c) in paragraph 20 for “the Special Commissioners” substitute “the tribunal”.

(33) In paragraph 12 of Schedule 28AA (provision not at arm’s length)(a)—

- (a) for “the Special Commissioners” wherever occurring substitute “the tribunal”;

- (b) for subparagraph (1) substitute—

“(1) In so far as the question in dispute on any appeal falling within subparagraph (2) below is or involves a determination of whether this Schedule has effect as respects any provision made or imposed as between any two persons, or of how it so has effect that question shall be determined by the tribunal.”.

- (c) in subparagraph (3) omit (a) and “and”;

- (d) In subparagraph (4)—

- (i) in (a) omit “to them”;

- (ii) in (c) for “their” substitute “the tribunal’s”.

Finance Act 1988

7.—(1) The Finance Act 1988 is amended as follows.

(2) In section 130(4)(provisions for securing payment by company of outstanding tax)for “the Special Commissioners” substitute “the tribunal”.

Taxation of Chargeable Gains Act 1992

8.—(1) The Taxation of Chargeable Gains Act 1992(b) is amended as follows.

(2) In section 13 (attribution of gains to members of non-resident companies) omit subsection (15).

(3) In section 138 (procedure for clearance in advance)—

- (a) for subsection (4) for “the Special Commissioners” substitute “the tribunal”;

- (b) for subsection (5) for “the Special Commissioners” and “Commissioners” substitute “the tribunal”.

(4) In section 211ZA(9) (transfers of business: transfer of unused losses)(c)—

- (a) for “the Special Commissioners who” substitute “the tribunal which”;

- (b) for “they determine” substitute “it determines”.

(5) In section 213(8) (spreading of gains and losses under section 212)—

- (a) for “the Special Commissioners who” substitute “the tribunal which”;

- (b) for “they determine” substitute “it determines”.

(6) In section 261B(4)(a) (treating trade loss etc as CGT loss)(d) for “the Commissioners” substitute “the tribunal”.

(a) Schedule 28AA inserted by section 108(2) and Schedule 16 to the Finance Act 1998 (c. 36).

(b) 1992 c.12

(c) Section inserted by section 170 and paragraph 21 of Schedule 33 to the Finance Act 2003 (c. 14).

(d) Sections 261B and 261C inserted by section 1027 and paragraphs 294 and 329 of Schedule 1 to the Income Tax Act 2007 (c. 3).

(7) In section 261C(3)(a) (meaning of the maximum amount for purposes of section 261B) for “the Commissioners” substitute “the tribunal”.

(8) In section 288(1) (interpretation) after the definition of “trading stock” insert—
““tribunal” means a tribunal established under section 3 of the Tribunals, Courts and Enforcement Act 2007.”.”

Finance (No 2) Act 1992

9.—(1) The Finance (No 2) Act 1992(a) is amended as follows.

(2) In section 35(9) (transitional relief for charities etc) for “the Special Commissioners” substitute “the tribunal”.

(3) Omit sections 75 (change of name of General and Special Commissioners), 76 (miscellaneous) and Schedule 16 (General and Special Commissioners).

Finance Act 1994

10.—(1) The Finance Act 1994(b) is amended as follows.

(2) In Chapter II of Part I Appeals and Penalties for the heading “*VAT and duties tribunals*” substitute “*The tribunal*”.

(3) In section 7 (VAT and duties tribunals)—

(a) in the heading for “VAT and duties tribunals” substitute “Appeal tribunal or tribunal”.

(b) in subsection (3) for “a VAT and duties tribunal” substitute “an Appeal tribunal or tribunal”;

(c) in subsection (5) for “paragraph 9 of Schedule 12 to the Value Added Tax Act 1994” substitute the [Tribunal Procedural Rules].

(4) In section 14 (requirement for review of a decision)—

(a) in the heading for “Requirement for review of a decision” add “under section 152(b) of the Management Act”;

(b) in subsection (1)—

(i) for paragraph (a) substitute “decisions specified in Schedule 5 paragraph 2(1)(r)”;

(ii) for paragraph (b) substitute “decisions in respect of which a review may not be undertaken under section 15D by virtue of 15F”;

(iii) omit paragraphs (ba) to (d).

(c) omit subsections (6) and (7).

(5) After section 14 insert—

“Review out of time

14A.—(1) If notice requiring a review under section 14 has not been given during the 45 day period in section 14(3) HMRC shall carry out a review if—

(a) requested in writing by the person requiring the review; and

(b) HMRC are satisfied that—

(i) there was a reasonable excuse for not giving notice requiring a review within the time limit; and

(ii) the request for review was made without unreasonable delay after the excuse ceased.

(a) 1992 c.48
(b) 1994 c. 9.

(2) If HMRC do not accept that subsection (1)(b) applies, the tribunal may on application in writing order that HMRC conduct a review.

(3) A review under subsections (1) or (2) shall be conducted under the provisions of section 15.”.

(6) In section 15—

- (a) in subsection (1) for “this Chapter” substitute “section 14”;
- (b) in subsection (2)(b) after the second “review” insert “under section 14”;
- (c) in the last line of subsection (2) for “Chapter” substitute “section”;
- (d) in subsection (3) for “Commissioners” substitute “tribunal”.

(7) After section 15 insert—

Offer of review

15A.—(1) Where an HMRC decision is notified to a person (P) —

- (a) in respect of which an appeal lies under section 16(1)(c) to (l), and
- (b) the determination of the tribunal on the appeal against the decision would be capable of further appeal,

HMRC must at the same time by notice offer a review of that decision.

P’s options

15B If a review has been offered under section 15A, P may do one of the following—

- (a) notify HMRC accepting the offer within 30 days from the date of the document containing the notification of the offer, or
- (b) serve a notice of appeal under section 16(2A).

Review out of time

15C If P has not accepted the offer of a review or served a notice of appeal within 30 days from the date of the document containing the notification of the offer HMRC shall carry out a review if—

- (a) P notifies HMRC requesting a review; and
- (b) HMRC accept that P had a reasonable excuse for not having accepted the offer of review within the time limit; and
- (c) the request by P was made without unreasonable delay after the excuse had ceased to apply.

Conduct of review

15D—(1) Where HMRC undertake a review offered under section 15A, they must give notice of their conclusions to P within 45 days from the date of receipt of P’s notification under section 15B or of the date they accept a late request for a review under section 15C unless another period is agreed.

(2) The nature and extent of a review shall be such as appears appropriate to HMRC in the circumstances having regard, in particular, to steps taken in reaching the decision, or to resolve disagreement about the decision, before the review commenced.

(3) Where HMRC are required to give notice within the period specified in or agreed under subsection (1) but fail to do so, and no longer period is subsequently agreed, the decision shall be deemed to be upheld.

(4) A review may conclude that the decision should be—

- (a) upheld;

- (b) varied; or
- (c) cancelled.

Appeal following review

15E—(1) Where an offer of a review under section 15A has been accepted, the provisions of section 16(2A) relating to the time limits for making appeals are modified as follows.

- (2) P may serve notice of appeal within 30 days from the earlier of—
 - (a) the date the time limit specified in or agreed under section 15D(1) or any longer period agreed under section 15D(3) expires; or
 - (b) the date of the document in which HMRC notify P of their conclusion on the review.

Review and appeal if section 14(2) review required

15F—(1) A review shall not be undertaken under section 15D where—

- (a) section 15A applies to the decision; and
- (b) the decision is linked by its subject matter to a decision for which a review is requested under section 14(2).

(2) Where subsection (1) applies—

- (a) any review shall be conducted under the provisions of section 15; and
- (b) any appeal shall be under the provisions of section 16(1)(a) or (b).

Notice

15G The references in the preceding provisions of this Part to the giving of notice or notification to or by P include references to the giving of notice or notification to or by, a person acting on behalf of P in relation to the appeal and cognate expressions shall be construed accordingly.

Meaning of “HMRC decision”

15H For the purposes of sections 15A and 15D “HMRC decision” has the meaning given in section 119(11) of the Finance Act 2008 and “the decision” has the same meaning.

(8) In section 16(1) (appeals to a tribunal)—

- (a) for “Subject” substitute “With the exception of decisions to which section 15F applies, and subject”;
- (b) in paragraph (b) for “after the end of the period mentioned in section 14(3) above” insert “under section 14A”;
- (c) insert after paragraph (b)—
 - “(c) any decision by the Commissioners, in relation to any customs duty or to any agricultural levy of the European Community, as to—
 - (i) whether or not, and at what time, anything is charged in any case with any such duty or levy;
 - (ii) the rate at which any such duty or levy is charged in any case, or the amount charged;
 - (iii) the person liable in any case to pay any amount charged, or the amount of his liability; or
 - (iv) whether or not any person is entitled in any case to relief or to any repayment, remission or drawback of any such duty or levy, or the amount of the relief, repayment, remission or drawback to which any person is entitled;

- (d) so much of any decision by the Commissioners that a person is liable to any duty of excise, or as to the amount of his liability, as is contained in any assessment under section 12 above;
 - (e) any decision by the Commissioners to assess any person to excise duty under section 12A(2) above, section 61, 94, 96 or 167 of the Management Act, section 8, 10, 11 or 36G of the Alcoholic Liquor Duties Act 1979, section 10, 13, 13AB, 14, 23 or 24 of the Hydrocarbon Oil Duties Act 1979, section 8 of the Tobacco Products Duty Act 1979, section 2 of the Finance (No 2) Act 1992 or as to the amount of duty to which a person is to be assessed under any of those provisions;
 - (f) any decision of the Commissioners on a claim under section 137A of the Customs and Excise Management Act 1979 for repayment of excise duty;
 - (g) any decision by the Commissioners as to whether or not any person is entitled to any drawback of excise duty by virtue of regulations under section 2 of the Finance (No 2) Act 1992, or the amount of the drawback to which any person is so entitled;
 - (h) any decision by the Commissioners as to whether or not any person is entitled to any repayment or credit by virtue of regulations under paragraph 4(2)(h) of Schedule 2A to the Alcoholic Liquor Duties Act 1979 (duty stamps), or the amount of the repayment or credit to which any person is so entitled;
 - (i) any decision by the Commissioners made by virtue of regulations under paragraph 4(2)(i) of that Schedule that some or all of a payment made, or security provided, is forfeit, or the amount which is so forfeit;
 - (j) so much of any decision by the Commissioners that a person is liable to any penalty under any of the provisions of this Chapter, or as to the amount of his liability, as is contained in any assessment under section 13 above;
 - (k) any decision as to whether or not—
 - (i) an amount due in respect of customs duty or agricultural levy, or
 - (ii) any repayment by the Commissioners of an amount paid by way of customs duty or agricultural levy,
 is to carry interest, or as to the rate at which, or period for which, any such amount is to carry interest;
 - (l) any decision by the Commissioners or any officer which is of a description specified in Schedule 5 to this Act, except for decisions under paragraph 2(1)(r);
- (9) For subsection (2) substitute—
- “(2) Any person who is—
- (a) the person who required the review referred to in subsections (1)(a) and (b);
 - (b) a person whose liability to pay any relevant duty or penalty is determined by, results from or is or will be affected by any decision to which this section applies;
 - (c) a person in relation to whom, or on whose application, such a decision has been made; or
 - (d) a person on or to whom the conditions, limitations, restrictions, prohibitions, or other requirements to which a decision relates are or are to be imposed or applied,
- may appeal under this section.”.
- (10) After section 16(2) insert—
- “(2A) An appeal under this section must be brought by a notice of appeal served before the expiration of 30 days after the date of the document containing the disputed HMRC decision, subject to section 15E.
- (2B) An application may be made to the tribunal for leave to appeal outside the time limits in subsection (2A) and section 15E(3) and the tribunal may grant leave.
- (2C) Any application to the tribunal under subsection (2B) must be in writing.”

(11) In section 16(3)—

(a) for “ paragraphs (a) to (c) of section 14(1)” substitute “paragraphs (c) to (j) of section 16(1)”;

(b) for—

“if any amount is outstanding from the appellant in respect of any liability of the appellant to pay any relevant duty to the Commissioners (including an amount of such duty which would be so outstanding if the appeal had already been decided in favour of the Commissioners) unless”,

substitute—

“unless the amount of relevant duty which the Commissioners have determined to be payable in relation to that decision has been paid or deposited with them except where”.

(12) In subsection 16(4)(b) and (c) for “a further review” substitute “a review or further review as appropriate”.

(13) In section 16(8) for “section 14(1)(a) to (c)” substitute “section 16(1)(c) to (j)”.

(14) After section 16(12) insert—

“(13) If it appears to the Commissioners that there is any description of decisions falling to be made for the purposes of any provision of—

- (a) the Community Customs Code,
- (b) any Community legislation made for the purpose of implementing that Code, or
- (c) any enactment or subordinate legislation so made,

which are not decisions to which this section otherwise applies, the Commissioners may by regulations provide for this section to apply to decisions of that description as it applies to the decisions mentioned in subsection (1) above.

(14) The power to make regulations under subsection (13) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament and shall include power—

- (a) to provide, in relation to any description of decisions to which this section is applied by any such regulations, that subsection (4) shall have effect as if those decisions were of a description specified in Schedule 5 to this Act; and
- (b) to make such other incidental, supplemental, consequential and transitional provision as the Commissioners think fit.”.

(15) In section 60 (insurance premium tax)—

(a) omit subsection (3);

(b) for subsection (6) substitute—

“(6) Where on an appeal the tribunal determines that the whole or part of any disputed amount paid or deposited in pursuance of subsection (4) above is not due, or that the whole or part of any amount due to the appellant by virtue of regulations under section 55(3)(c), (d) or (f) above has not been paid, so much of that amount as the tribunal determines not to be due or not to have been paid shall be repaid or paid as appropriate with interest at the rate applicable under section 197 of the Finance Act 1996(a).”;

(c) omit subsection (7);

(d) in subsection (8) for “the tribunal may, if it thinks fit, direct that that amount shall be paid with interest at such rate as may be specified in the direction.” substitute “it shall be paid with interest at the rate applicable under section 197 of the Finance Act 1996.”

(16) In section 73 (interpretation) for “appeal tribunal” substitute “appeal tribunal or tribunal means a tribunal established under section 3 of the Tribunals, Courts and Enforcement Act 2007”.

(a) 1996 c. 8.

- (17) In Schedule 6 (air passenger duty administration and enforcement)—
- (a) in paragraph 6 after “any return” insert “for an accounting period to which the appeal relates”.
 - (b) In paragraph 8(1) for “at such rate as the tribunal may determine” substitute “at the rate applicable under section 197 of the Finance Act 1996”.

Value Added Tax Act 1994

- 11.**—(1) The Value Added Tax Act 1994(a) is amended as follows.
- (2) For the heading of Part 5 (appeals) substitute “Reviews and Appeals”.
 - (3) In section 82 (appeal tribunals)—
 - (a) for subsection (1) substitute—

“(1) Any reference in this Act to a tribunal is a reference to a tribunal established under section 3 of the Tribunal, Courts and Enforcement Act 2007.”,
 - (b) in subsection (2) after “The tribunals” omit “continue to”,
 - (c) omit subsections (3) and (4).
 - (4) After section 82 (appeal tribunals) insert—

“Offer of review

- 82A.** Where an HMRC decision is notified to a person (P) —
- (a) in respect of which an appeal lies under section 83, and
 - (b) the determination of the tribunal on the appeal against the decision would be capable of further appeal,
- HMRC must at the same time by notice offer a review of that decision.

P’s options

- 82B** If a review has been offered under section 82A, P may do one of the following—
- (a) notify HMRC accepting the offer within 30 days from the date of the document containing the notification of the offer, or
 - (b) serve a notice of appeal under section 83A.

Review out of time

- 82C** If P has not accepted the offer of a review or served a notice of appeal within 30 days from the date of the document containing the notification of the offer HMRC shall carry out a review if—
- (a) P notifies HMRC requesting a review; and
 - (b) HMRC accept that P had a reasonable excuse for not having accepted the offer of review within the time limit; and
 - (c) the request by P was made without unreasonable delay after the excuse had ceased to apply.

Conduct of review

- 82D.**—(1) Where HMRC undertake a review offered under section 82A, they must give notice of their conclusions to P within a period of 45 days from the date of receipt of P’s

(a) 1994 c. 23.

notification under section 82B or of the date they accept a late request for a review under section 82C unless another period is agreed.

(2) The nature and extent of a review shall be such as appears appropriate to HMRC in the circumstances having regard, in particular, to steps taken in reaching the decision, or to resolve disagreement about the decision, before the review commenced.

(3) Where HMRC are required to give notice within the period specified in or agreed under subsection (1) but fail to do so, and no longer period is subsequently agreed, the decision shall be deemed to be upheld.

- (4) A review may conclude that the decision should be—
- (a) upheld,
 - (b) varied, or
 - (c) cancelled.

Appeal following review

82E.—(1) Where an offer of a review under section 82A has been accepted, the provisions of section 83A relating to the time limits for making appeals are modified as follows.

- (2) P may serve notice of appeal within 30 days from the earlier of—
- (a) the date the time limit specified in or agreed under section 82D(1) or any longer period agreed under section 82D(3) expires; or
 - (b) the date of the document in which HMRC notify P of their conclusion on the review.

Notice

82F. The references in the preceding provisions of this Part to the giving of notice or notification to or by P include references to the giving of notice or notification to or by, a person acting on behalf of P in relation to the appeal and cognate expressions shall be construed accordingly.

Meaning of “HMRC decision”

82G For the purposes of sections 82A and 82D—

- (a) “HMRC decision” has the meaning given in section 119(11) of the Finance Act 2008 and “the decision” has the same meaning.

- (5) After section 83 insert—

“Time for appealing

83A.—(1) Subject to section 82E(2), an appeal in respect of any matter falling within section 83 must be brought by a notice of appeal served before the expiration of 30 days after the date of the document containing the disputed HMRC decision.

(2) P may apply to the tribunal for leave to appeal outside the time limits in subsection (1) and section 82E(3) and the tribunal may grant leave.

(3) Any application to the tribunal under subsection (2) must be in writing.

- (6) In section 84 (further provisions relating to appeals)—

- (a) omit subsection (2);
- (b) for subsection (3) substitute—

“(3) Subject to subsections (3B) and (3C), where the appeal is against a decision with respect to any of the matters mentioned in section 83(b), (n), (p), (q), (ra) or (zb) it shall not

be entertained unless the amount which HMRC have determined to be payable as VAT has been paid or deposited with them.”.

(c) for subsection 3A substitute—

(3A) Subject to subsections (3B) and (3C), where the appeal is against an assessment which is a recovery assessment for the purposes of this subsection, or against the amount of such an assessment it shall not be entertained unless the amount notified by the assessment has been paid or deposited with HMRC.

(d) after subsection (3A) insert—

“(3B) If satisfied that P would otherwise suffer hardship, HMRC may agree that the appeal shall be entertained notwithstanding that the amount determined has not been paid or deposited.

(3C) If HMRC and P cannot reach agreement as to the issue of hardship, P may apply to the tribunal for a determination of that issue.”.

(e) in subsection (4) in paragraphs (a) and (b) and in the words following paragraph (c) for “the Commissioners” substitute “HMRC”;

(f) in subsection (7) for “the Commissioners” substitute “HMRC”;

(g) omit subsection (8);

(h) in subsection (9)—

(i) after “section 14” add “or 15A”;

(ii) in paragraph (b) for “the Commissioners” substitute “HMRC”;

(iii) at the end of paragraph (b) insert “and”;

(iv) after paragraph (b) insert—

“(c) a review is not being undertaken following a request under section 14A of that Act; and

(d) a review is not being undertaken under section 15 of that Act as a consequence of section 15F of that Act.”.

(i) in subsection (10) for “a decision of the Commissioners” substitute “an HMRC decision”.

(7) In section 85 (settling appeals by agreement) —

(a) in subsection (1) at the end, omit “(including any terms as to costs)”; and

(b) for “the Commissioners” (in each place) substitute “HMRC”.

(8) After section 85 insert—

“Payment of tax on determination of appeal

85A.—(1) This section applies where a tribunal has determined an appeal under section 83.

(2) Where on an appeal the tribunal determines that—

(a) the whole or part of any disputed amount paid or deposited is not due, or

(b) that the whole or part of any VAT credit due to the appellant has not been paid,

so much of that amount 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(a).

(3) Where on appeal the tribunal determines 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,

(a) 1996 c. 8.

so much of that amount 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) 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.

Payment of tax where there is a further appeal

85B—(1) Where a party makes a further appeal, notwithstanding that the further appeal is pending, tax or VAT credits, or a credit of overstated or overpaid VAT shall be payable or repayable in accordance with the determination of the tribunal or court as the case may be.

(2) But if the amount payable or repayable is altered by the order or judgment of the Upper Tribunal or court—

- (a) if too much 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 Upper Tribunal or court may allow; and
- (b) if too little tax has been charged or the whole or part of any VAT credit paid was not payable so much of the amount as the Upper 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 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 tribunal or court considers it necessary for the protection of the revenue, subsection (1) shall not apply and the 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 P, HMRC are satisfied that financial extremity might be reasonably expected to result if payment or repayment is required or withheld as appropriate, HMRC may agree that subsection (6) shall apply.

(5) If P and HMRC cannot reach agreement, P may apply to the tribunal or court for a determination of that issue.

(6) In considering an application under subsections (3), (4) or (5), HMRC or the tribunal or court may—

- (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 P;
- (c) stay the requirement to pay or repay under subsection (1),

until the appeal is determined.

(7) Security under subsections (3) and (6) shall be of such amount and given in such manner as the tribunal or court may determine, but in the case of an application under subsection (3) HMRC may agree to accept such security as they consider adequate to protect the revenue.

(8) An application under this section shall be made to the tribunal or court from which permission or leave to appeal is sought.

(9) Subsections (3) to (8) cease to have effect when the appeal has been determined.”.

(9) Section 86 (appeals to the Court of Appeal) shall cease to have effect.

(10) In section 97 (orders, rules and regulations)—

- (a) in subsection (1) after “the Treasury” omit “or the Lord Chancellor”,
 - (b) omit subsection (2).
- (11) Schedule 12 (constitution and procedure of tribunals) shall cease to have effect.

Finance Act 1996

12.—(1) The Finance Act 1996(a) is amended as follows.

(2) Omit subsection 55(2).

(3) (a) for section 55(3) (landfill tax, appeals) substitute—

“(3) Where an appeal under this section relates to a decision falling within section 54(1)(b) or (d), that appeal shall not be entertained unless the amount which HMRC have determined to be payable as tax has been paid or deposited with them.”.

(b) after subsection (3) insert—

“(3AA) If it is satisfied that the appellant would otherwise suffer hardship, HMRC may agree that the appeal shall be entertained notwithstanding that the amount determined has not been paid or deposited.

(3AB) If HMRC and the appellant cannot reach agreement as to the issue of hardship, the appellant may apply to the tribunal for a determination of that issue.”.

(4) In section 56 (landfill tax: appeals: other provisions)—

(a) for subsection (3) substitute—

“(3) Where on an appeal under section 55 above it is found that the whole or any part of any amount paid or deposited in pursuance of section 55(3) is not due or payable, so much of that amount as the tribunal determines not to be due or payable shall be paid or repaid with interest at the rate applicable under section 197 of this Act.”;

(b) in subsection (4) for “at such rate as the tribunal may determine” substitute “at the rate applicable under section 197 of this Act”.

(c) in subsection (5) for “the tribunal may, if it thinks fit, direct that the amount shall be paid with interest at such rate as may be specified in the direction” substitute “it shall be paid with interest at the rate applicable under section 197 of this Act”.

(5) In section 56(8) after “85” add “, 85B” and after “settling of appeals by agreement” in parenthesis add “, payment of tax when there is a further appeal”.

(6) In section 70 (interpretation) for “appeal tribunal” substitute ““appeal tribunal or tribunal” means a tribunal established under section 3 of the Tribunals, Courts and Enforcement Act 2007”.

Finance Act 1998

13.—(1) The Finance Act 1998(b) is amended as follows.

(2) In subsection (5) of section 111 (notice to potential claimants) for “the Special Commissioners” substitute “the tribunal”.

(3) In Schedule 18 (company tax returns, assessments and related matters)—

(a) in paragraph 27(5)(b) for “the Special Commissioners” substitute “the tribunal”;

(b) in paragraph 28—

(i) after subparagraph (2) insert—

“(2A) Where the appellant and HMRC cannot reach agreement, the appellant may refer the appeal to the tribunal within 30 days of the date when HMRC inform the appellant of their decision on the appeal.”.

(a) 1996 c.8
(b) 1998 c.36

- (ii) in subparagraph (4) for “the Commissioners” substitute “the tribunal” and omit “to them”;
- (iii) in subparagraphs (5) and (6) for “the Commissioners” substitute “the tribunal”;
- (c) in paragraph 29(2)(b) for “the Commissioners” substitute “the tribunal”.
- (d) after paragraph 30(4) insert

“(4A) The decision to amend a company’s self-assessment may not be reviewed under the provisions of section 43D of the Taxes Management Act 1970 before the completion of the enquiry.”.
- (e) in paragraph 31A(a)—
 - (i) in the heading for “Special Commissioners” substitute “the tribunal”;
 - (ii) in subparagraph (1) for “the Special Commissioners” substitute “the tribunal” and omit “their”;
 - (iii) in subparagraph (2) for “the Special Commissioners” substitute “the tribunal”.
- (f) in paragraph 31B, 31C and 31D for “the Special Commissioners” substitute “the tribunal”;
- (g) in paragraph 33 for “Commissioners” wherever occurring substitute “the tribunal”;
- (h) in paragraph 51(5) and (6) for “the Special Commissioners” substitute “the tribunal”;
- (i) in paragraph 92(3) for “the Commissioners” substitute “the tribunal”.
- (j) in paragraph 93—
 - (i) in the heading for “Special or General Commissioners” substitute “the tribunal”;
 - (ii) in subparagraph (2) for “An appeal against a decision of the Board shall be to the Special Commissioners” substitute “An appeal shall be to the tribunal”;
 - (iii) omit subparagraphs (2A) and (3);
- (k) omit paragraph 94.

Finance Act 1999

- 14.—(1) The Finance Act 1999(b) is amended as follows.
- (2) In Schedule 11 (company tax returns etc) omit paragraph 9.

Finance Act 2000

- 15.—(1) Schedule 6 of the Finance Act 2000(c) (climate change levy, review and appeal) is amended as follows.
- (2) In paragraph 122—
 - (a) for subsection (2) substitute—

“(2) Where an appeal under this section relates to a decision (whether or not contained in an assessment) that an amount of levy is due from any person, that appeal shall not be entertained unless the amount which HMRC have determined to be due has been paid or deposited with them.”.
 - (b) after subsection (2) insert—

(a) Paragraphs 31A to 31D inserted by section 88 and paragraph 7 of Schedule 29 to the Finance Act 2001 (c. 9).
 (b) 1999 c.16
 (c) 2000 c.17

“(2AA) If it is satisfied that the appellant would otherwise suffer hardship, HMRC may agree that the appeal shall be entertained notwithstanding that the amount determined has not been paid or deposited.

(2AB) If HMRC and the appellant cannot reach agreement as to the issue of hardship, the appellant may apply to the tribunal for a determination of that issue.”.

(3) For paragraph 123—

- (a) in subparagraph (4) for “at such rate as the appeal tribunal may determine” substitute “at the rate applicable under section 197 of the Finance Act 1996”;
- (b) in subparagraph (5) for “at such rate as the appeal tribunal may determine” substitute “at the rate applicable under section 197 of the Finance Act 1996”;
- (c) in subparagraph (6) for “the appeal tribunal may, if they think fit, direct that that amount shall be paid with interest at such rate as may be specified in the direction” substitute “it shall be paid with interest at the rate applicable under section 197 of the Finance Act 1996”;
- (d) In section 123(7) after “85” add “, 85B” and after “settling of appeals by agreement” in parenthesis add “, payment of tax when there is a further appeal”.

(4) In paragraph 147 for “appeal tribunal” substitute ““appeal tribunal or tribunal” means a tribunal established under section 3 of the Tribunals, Courts and Enforcement Act 2007”.

Capital Allowances Act 2001

16.—(1) The Capital Allowances Act 2001(a) is amended as follows.

(2) In section 204 (appeals etc)—

- (a) in subsection (2) for “the Special Commissioners” substitute “the tribunal”;
- (b) in subsection (3)—
 - (i) in (a) for “the Special Commissioners” substitute “the tribunal”;
 - (ii) in (b) omit “to them”;
- (c) in subsection (4) for “any body of Commissioners” substitute “the tribunal” and for “them” substitute “it”;
- (d) in subsection (5) for “the Commissioners” substitute “the tribunal”;
- (e) in subsection (6)—
 - (i) in (a) for “the Commissioners” substitute “the tribunal”;
 - (ii) in (b) omit “to them”;
 - (iii) for “Commissioners” substitute “tribunal’s”;

(3) In section 563 (procedure for determining certain questions affecting two or more persons)—

- (a) omit subsections (2) to (5);
- (b) in subsection (6) for “the Commissioners” substitute “the tribunal”.

(4) In paragraph 91 of Schedule 3 (disposal of oil licences)—

- (a) in subparagraph (5)—
 - (i) for “the Special Commissioners are” substitute “the tribunal is”;
 - (ii) for “they” substitute “it”.
- (b) for subparagraph (6) substitute “The tribunal shall determine any question under subparagraph (5) in the same way as an appeal: but both the transferor and transferee are entitled to appear and be heard by the tribunal or to make written representations.”

(a) 2001 c.2

Finance Act 2001

17.—(1) The Finance Act 2001(a) is amended as follows.

(2) For section 41 (aggregates levy: determinations on appeal)—

(a) for subsection (2) substitute—

“(2) Where an appeal under this section relates to a decision (whether or not contained in an assessment) that an amount of aggregates levy is due from any person, that appeal shall not be entertained unless the amount which HMRC have determined to be due has been paid or deposited with them.”.

(b) after subsection (2) insert—

“(2AA) If satisfied that the appellant would otherwise suffer hardship, HMRC may agree that the appeal shall be entertained notwithstanding that the amount determined has not been paid or deposited.

(2AB) If HMRC and the appellant cannot reach agreement as to the issue of hardship, the appellant may apply to the tribunal for a determination of that issue.”.

(3) For section 42 (aggregates levy; determinations on appeal)—

(a) in subsection (4) for “at such rate as the tribunal shall determine” substitute “at the rate applicable under section 197 of the Finance Act 1996”.

(b) in subsection (5) for “at such rate as the tribunal shall determine” substitute “at the rate applicable under section 197 of the Finance Act 1996”.

(c) in subsection (6) for “the tribunal may, if they think fit, direct that that amount shall be paid with interest at such rate as may be specified in the direction” substitute “it shall be paid with interest at the rate applicable under section 197 of the Finance Act 1996”.

(4) In section 42(7) after “85” insert “, 85B” and after “settling of appeals by agreement” in parenthesis insert “, payment of tax when there is a further appeal”.

(5) In section 48 (interpretation of part) for “appeal tribunal” substitute ““appeal tribunal or tribunal” means a tribunal established under section 3 of the Tribunals, Courts and Enforcement Act 2007”.

(6) For paragraph 14 (4) of Schedule 3 (appeals) substitute—

“(4) The rate of interest is the rate applicable under section 197 of the Finance Act 1996.”

Income Tax (Earnings and Pensions) Act 2003

18.—(1) The Income Tax (Earnings and Pensions) Act 2003(b) is amended as follows.

(2) In section 43(1) (appeal against Commissioners’ decision on domicile or ordinary residence) for “the Special Commissioners” substitute “the tribunal”.

(3) In section 111 (disputes as to annual value)—

(a) In subsection (2) for “the General Commissioners” substitute “the tribunal”;

(b) In subsection (3) for “The Commissioners” substitute “The tribunal”.

(4) In section 345(2) (decisions of an officer of Revenue and Customs under section 344) for “the Special Commissioners” substitute “the tribunal”.

(5) In section 684(5) (PAYE regulations) for “the General or Special Commissioners” substitute “the tribunal”.

(6) In section 715(3)(b) (approval of schemes: regulation by Treasury) for “the Special Commissioners” substitute “the tribunal”.

(7) In Schedule 1 (index of expressions defined in this Act or ICTA)—

(a) 2001 c.9
(b) 2003 c.1

- (a) In Schedule 1 Part 1 (abbreviations of acts and instruments) insert at the end “TCEA” and “Tribunals, Courts and Enforcement Act 2007 (c 15)”;
- (b) In Schedule 1 Part 2—
 - (i) omit the entry for “General Commissioners”;
 - (ii) omit the entry for “Special Commissioners”;
 - (iii) following the entry for “transport voucher” insert—
““tribunal” and “section 3 TCEA 2007””.
- (8) In Schedule 2 (approved share incentive plans)—
 - (a) in paragraph 82 (appeal against refusal of approval)—
 - (i) for “the Special Commissioners” and “the Commissioners”, wherever occurring, substitute “the tribunal”;
 - (ii) in subparagraph (3) for “they” substitute “it”;
 - (b) in paragraph 85(2) (appeal against withdrawal of approval) for “the Special Commissioners” substitute “the tribunal”;
 - (c) in paragraph 100 (the index of defined expressions) omit the entry for “Special Commissioners” and following the entry for “tax year” insert—
““tribunal” and “section 3 TCEA 2007””.
- (9) In Schedule 3 (approved SAYE option schemes)—
 - (a) in paragraph 41 (appeal against refusal of approval)—
 - (i) for “the Special Commissioners” and “the Commissioners”, wherever occurring, substitute “the tribunal”;
 - (ii) in subparagraph (3) for “they” substitute “it”;
 - (b) in paragraph 44(2) (appeal against withdrawal of approval) for “the Special Commissioners” substitute “the tribunal”.
 - (c) in paragraph 49 (the index of defined expressions) omit the entry for “Special Commissioners” and following the entry for “tax year” insert—
““tribunal” and “section 3 TCEA 2007””.
- (10) In Schedule 4 (approved CSOP schemes)—
 - (a) in paragraph 29 (appeal against refusal of approval)—
 - (i) for “the Special Commissioners” and “the Commissioners” substitute “the tribunal”;
 - (ii) in subparagraph (3) for “they” substitute “it”;
 - (b) in paragraph 32(2) (appeal against withdrawal of approval) for “the Special Commissioners”, wherever occurring, substitute “the tribunal”;
 - (c) in paragraph 37 (index of defined expressions) omit the entry for “Special Commissioners” and following the entry for “shares” insert—
““tribunal” and “section 3 TCEA 2007””.
- (11) In Schedule 5 (enterprise management incentives)—
 - (a) in paragraph 48 (completion of enquiry: application for closure notice to be given)—
 - (i) in subparagraph (1) after “made” insert “to the tribunal”;
 - (ii) omit subparagraph (3);
 - (iii) in subparagraphs (4) for “Commissioners” substitute “tribunal” and omit “hear and”;
 - (iv) in subparagraph (5) for “Those Commissioners” substitute “The tribunal”.
 - (b) In paragraph 50 (appeals) for subparagraph (4) substitute—
“(4) The appeal lies to the tribunal.”.

- (c) In paragraph 56 (determination of market value of shares)—
 - (i) in paragraph (5) substitute—
 - “(5) Any reference under subparagraph (4) must be made to the tribunal which must determine the reference in the same way as an appeal.”;
 - (ii) omit paragraph (6);
- (d) In paragraph 57(3) (appeal against determination of market value of shares) for “—(a) to the General Commissioners; or (b) if the applicant so elects (in accordance with section 46(1) of TMA 1970), to the Special Commissioners” substitute “to the tribunal”;
- (e) In paragraph 59 (index of defined expressions)—
 - (i) omit the entry for “General Commissioners”;
 - (ii) omit the entry for “Special Commissioners”.

Finance Act 2003

- 19.**—(1) The Finance Act 2003(**a**) is amended as follows.
- (2) In section 24(3) (introductory) for “a VAT and duties tribunal” substitute “the tribunal”.

Finance Act 2004

- 20.**—(1) The Finance Act 2004(**b**) is amended as follows.
- (2) In section 306A for “the Special Commissioners”, wherever occurring, substitute “the tribunal”.
- (3) In section 308A for “the Special Commissioners”, wherever occurring, substitute “the tribunal”.
- (4) In section 313B(1) for “the Special Commissioners” substitute “the tribunal”.
- (5) In section 314A for “the Special Commissioners”, wherever occurring, substitute “the tribunal”.
- (6) Omit section 317A.
- (7) In section 318 (interpretation of part 7) omit “the Special Commissioners has the meaning given by section 4 of the Taxes Management Act” and after “tax means” insert—
 - ““the tribunal” means a tribunal established under section 3 of the Tribunals, Courts and Enforcement Act 2007.”.

Income Tax (Trading and Other Income) Act 2005

- 21.**—(1) The Income Tax (Trading and Other Income) Act 2005(**c**) is amended as follows.
- (2) In section 186 (determination of questions by Commissioners)—
 - (a) for the heading substitute “determination of questions by the tribunal”;
 - (b) in subsection (1) for “the General or Special Commissioners” substitute “the tribunal”;
 - (c) omit subsections (2) to (4).
- (3) In section 646(7) (adjustments between settler and trustees etc) for “the General Commissioners” substitute “the tribunal”.

Income Tax Act 2007

- 22.**—(1) The Income Tax Act 2007(**d**) is amended as follows.

(a) 2003 c.14
 (b) 2004 c.12
 (c) 2005 c.5
 (d) 2007 c.3

(2) In section 341(3)(a) (terms and conditions of accreditation) for “the Special Commissioners” substitute “the tribunal”.

(3) Omit section 538(4).

(4) In section 557(2) (substantial donor transactions: supplementary) for “the Special Commissioners” substitute “the tribunal”.

(5) In section 674(7) (meaning of the “settlement day”) for “the General Commissioners or the Special Commissioners” substitute “the tribunal”.

(6) In section 684(4) (person liable to counteraction of income tax advantage) for “tribunal” insert “First-tier Tribunal”.

(7) In section 692(2) (abnormal dividends: general)—

(a) for (2)(c) “the Special Commissioners” substitute “the First-tier Tribunal”;

(b) in subsection (2)(c) omit “or”;

(c) omit subsection (2)(d).

(8) In section 697(2) (opposed notifications: determinations by tribunal) for “the tribunal appointed under section 704” substitute “the First-tier Tribunal”.

(9) In section 698(1)(b) (counteraction notices)—

(a) for “the tribunal” substitute “the First-tier Tribunal”;

(b) omit “to which such a declaration is sent under section 697”.

(10) Omit section 704.

(11) In section 705 (appeals against counteraction notices)—

(a) for “the Special Commissioners” substitute “the First-tier tribunal”;

(b) in subsection (4) omit “(or a request for its rehearing under section 706)”.

(12) Omit sections 706 to 711.

(13) In section 751 (Special Commissioners’ jurisdiction on appeals)—

(a) In the heading for “Special Commissioners” substitute “the tribunal’s”;

(b) In section 751 for “Special Commissioners” substitute “the tribunal”.

(14) In section 989 (definitions) after the definition of “trade” insert—

““tribunal” means a tribunal established under section 3 of the Tribunals, Courts and Enforcement Act 2007.”

Finance Act 2007

23.—(1) The Finance Act 2007(a) is amended as follows.

(2) In subparagraph (16) of Schedule 24 (penalties) for “— (a) the General Commissioners, in so far as the penalty relates to direct tax, or (b) a VAT and duties tribunal, in so far as the penalty relates to VAT” substitute “the tribunal”.

Consequential amendments, &c.

24.—(1) In so far as is appropriate in consequence of this Order a reference in an enactment, instrument or other document to the General Commissioners, the Special Commissioners or the VAT and duties tribunal (however expressed) shall be taken as a reference to a tribunal established under section 3 of the Act.

(2) In so far as is appropriate in consequence of this Order a reference in an enactment, instrument or other document to a Commissioner, chairman or other official of a tribunal to which this Order applies (however expressed) shall be taken as a reference to the appropriate office-holder or staff appointed under the Act.

(a) 2007 c.11

Transitional Provisions

Transitional provisions

1. Any proceedings before the General Commissioners, Special Commissioners, VAT and duties tribunals or a tribunal established under section 706 of the Income and Corporation Taxes Act 1988 or section 704 of the Income Taxes Act 2007 which are pending immediately before [the commencement date] shall continue on and after that date as proceedings before the First-tier Tribunal.

2. (1) The following sub-paragraphs apply where proceedings are continued in the First-tier Tribunal by virtue of paragraph 1.

(2) The First-tier Tribunal may give any direction to ensure that proceedings are dealt with fairly and, in particular, may—

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

(3) In sub-paragraph (2) “procedural rules” means provision (whether called rules or not) regulating practice or procedure before a tribunal.

(4) 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 First-tier Tribunal.

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

(6) An order for costs may only be made if, and to the extent that, an order could have been made before [the commencement date].

3. Where an appeal lies to a court from any decision made before [the commencement date] by the General Commissioners, Special Commissioners the VAT and duties Tribunals or a tribunal established under section 706 of the Income and Corporation Taxes Act 1988 or section 704 of the Income Taxes Act 2007 whose functions are transferred to the First-tier Tribunal, section 11 of the 2007 Act (right to appeal to Upper Tribunal) will apply as if the decision were a decision made on or after [the commencement date] by the First-tier Tribunal.

4. Any case to be remitted by a court on or after [the commencement date] in relation to a tribunal whose functions are transferred under article 3 of this Order shall be remitted to the First-tier Tribunal or Upper Tribunal as the case may be.

Direct Tax Appeals

5. Where proceedings were pending before the General or Special Commissioners immediately before [the commencement date] and paragraph 1 applies, they shall be continued before the First-tier Tribunal on the basis of the provisions of the Taxes Management Act 1970 and other relevant enactments as they were immediately before that date.

6. Subject to paragraph 7 all other cases which would have been heard by the General or Special Commissioners, appeals shall be conducted under the provisions of the Taxes Management Act 1970 and other relevant enactments as amended by this Order.

7.—(1) This paragraph applies where—

- (a) the notice of appeal was given to HMRC before [the commencement date]; and
- (b) after that date, a review is required or offered under section 43D of the Taxes Management Act 1970.

(2) Where the date on which a review is required or offered under section 43D falls within 12 months of [the commencement date] the period for HMRC to give notice of their conclusions for the purposes of section 43F(1) shall be 90 days unless another period is agreed.

Indirect Tax Appeals

8. Subject to paragraphs 9 and 10 where an HMRC decision relating to a matter to which section 82(2) of the Value Added Tax Act 1994 applies is notified to a person before [the commencement date], an appeal shall be conducted on the basis of the provisions of that Act and other relevant enactments as they were immediately before that date.

9. Section 85B of VATA shall apply to all appeals made from decisions of the VAT and duties tribunal on or after [the commencement date].

10. Section 85A of VATA and paragraph 14(4) of Schedule 3 to the Finance Act 2001 (as amended by this Order) shall apply to all determinations of the tribunal from [the commencement date].

11. In all other cases which would have been heard by the VAT and duties tribunals, appeals shall be conducted under the provisions of that Act and other relevant enactments as amended by this Order.

SCHEDULE 3

Article 7

PART 1

Repeals

<i>Short title and chapter</i>	<i>Extent of repeal</i>
Taxes Management Act 1970 (c. 9.)	Sections 4, 5 and 6(1) and (5). In section 28A(6) the words “they are”. In section 28B(7) the words “they are”. Section 28ZC. Sections 31B to 31D. Sections 44 to 46D. In section 50(6) the words “the majority of” and “present at the hearing”. Section 53. In section 55(5) the words from “and where” to “above”. In section 55(6A)(b) the words “the Commissioners have so determined”. Section 55(10) and (11). Sections 56A to 56D. Section 58. In section 59C(9)(a) and (b) the words “to them”. In sections 93(8)(a) and (b) the words “to them”. In section 93A(7)(a) and (b) the words “to them”. Section 98B(3). In section 100B(2) the words “to them”. Section 100B(3). Section 100C(1A).

	<p>Section 112(2).</p> <p>Section 115(4) and (5).</p> <p>In section 118 the definitions of The General Commissioners Regulations and The Special Commissioners Regulations.</p> <p>In Schedule 1A paragraph 6A(3)(a) and (b) the words “to them”.</p> <p>In Schedule 1A paragraph 7(7) the words “they are”.</p> <p>In Schedule 1A paragraph 9(5) the words “to them”.</p> <p>Schedule 1A paragraphs 10 and 11.</p> <p>Schedule 3.</p> <p>In Schedule 3A paragraph 4(8) the words “to them”.</p> <p>In Schedule 3A paragraph 11(6) the words “the General or Special Commissioners or”.</p>
Finance Act 1973 (c.51)	Section 41.
Finance Act 1975 (c.7)	Section 57.
Income and Corporation Taxes Act 1988 (c.1)	<p>Section 152(5)(c)(i) and (ii).</p> <p>Section 296(5).</p> <p>In section 343(10) the words “by the Commissioners who are to make the determination” and “to them”.</p> <p>Section 343(10)(a) to (c).</p> <p>Section 584(9).</p> <p>Section 705(2) and (3).</p> <p>In section 705 the words “to (3)”.</p> <p>Section 705A, 705B and 706.</p> <p>In section 709(4) the words “the Special Commissioners”.</p> <p>Section 754 (3A).</p> <p>In section 754(3B) the words “to them”.</p> <p>Section 783(9)(a) to (c).</p> <p>In section 783(9) the words “by the Commissioners who are to make the determination” and “to them”.</p> <p>In Schedule 28AA paragraph 12(1)(b).</p> <p>Schedule 28AA paragraph 12(3) (a) and the word “and”.</p> <p>In Schedule 28AA paragraph 12(4) the words “to them”.</p>
Taxation of Chargeable Gains Act 1992 (c.12)	Section 13(15).
Finance Act (No 2) 1992 (c.48)	<p>Sections 75 and 76.</p> <p>Schedule 16.</p>
Finance Act 1994 (c. 9)	<p>Section 14(1)(ba) to (d).</p> <p>Section 60(3) and (7).</p>
Value Added Tax Act 1994 (c. 23)	<p>In section 82(2) the words “continue to”.</p> <p>Section 82(3) and (4).</p> <p>Section 84(2) and (8).</p> <p>In section 85(1) the words “(including any terms as to costs)”.</p> <p>Section 86.</p> <p>In section 97(1) the words “or the Lord Chancellor”.</p> <p>Section 97(2).</p> <p>Schedule 12.</p>
Finance Act 1996 (c. 8)	Section 55(2).
Finance Act 1998 (c. 36)	<p>In schedule 18 paragraph 31A the word “their”.</p> <p>Schedule 18 paragraph 93(2A) and (3).</p> <p>Schedule 18 paragraph 94.</p>

Finance Act 1999 (c.16)	Schedule 11 paragraph 9.
Capital Allowances Act 2001 (c. 2)	In section 204(3)(b) the words “to them”. In section 204(6)(b) the words “to them”. Section 563(2) to (5).
Income Tax (Earnings and Pensions) Act 2003 (c.1)	In Schedule 1 Part 2 the definitions of General Commissioners and Special Commissioners. In Schedule 2 paragraph 100 the definition of Special Commissioners. In Schedule 3 paragraph 49 the definition of Special Commissioners. In Schedule 4 paragraph 37 the definition of Special Commissioners. Schedule 5 paragraph 48(3). In Schedule 5 paragraph 48(4) the words “hear and”. Schedule 5 paragraph 59 the definitions of General Commissioners and Special Commissioners.
Finance Act 2004 (c. 12)	Section 317A. In section 318 the definition of the Special Commissioners.
Income Tax (Trading and Other Income) Act 2005 (c.5)	Section 186(2) to (4). Schedule 2 paragraph 153(4).
Income Tax Act 2007 (c.3)	Section 538(4). In section 692(2)(c) the word “or”. In section 698(1)(b) the words “to which a declaration is sent under section 697”. Section 704. In section 705 the words “(or a request for rehearing under section 706)”. Sections 706 to 711 Schedule 1 paragraphs 250, 255 and 256

PART 2

Revocations

1. The Value Added Tax Tribunals Rules 1986(**a**).
2. The Special Commissioners (Jurisdiction and Procedure) Regulations 1994(**b**).
3. The General Commissioners (Jurisdiction and Procedure) Regulations 1994(**c**) and the General Commissioners of Income Tax (Costs) Regulations 2001(**d**).

(a) S.I. 1986/590.
(b) S.I. 1994/1811.
(c) S.I. 1994/1812.
(d) S.I. 2001/1304.