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STATUTORY INSTRUMENTS

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**2018 No. 41**

**SOFT DRINKS INDUSTRY LEVY**

**The Soft Drinks Industry Levy Regulations 2018**

<i>Made</i>	- - - -	<i>15th January 2018</i>
<i>Laid before the House of Commons</i>	- - - -	<i>17th January 2018</i>
<i>Coming into force</i>	- -	<i>6th April 2018</i>

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred by sections 27(5), 29(4) and (5), 30(1)(d), (3), (4)(b) and (7), 34, 39, 48, 49, 52(1) to (3), 53(1), 57 and 59(2) and (3)(c) of the Finance Act 2017<sup>(1)</sup>.

**PART 1**

**Preliminary**

**Citation and commencement**

1. These Regulations may be cited as the Soft Drinks Industry Levy Regulations 2018 and come into force on 6th April 2018.

**Interpretation**

2.—(1) In these Regulations—

“account” means an account described in regulation 23;

“accounting period” has the meaning given by regulation 19;

“case” means, in relation to a claim for tax credits, a case described in regulation 15;

“liable person” means a person described in section 35 who is liable to pay soft drinks industry levy;

“prescribed” means prescribed by the Commissioners in a published notice, and “prescribe” is to be construed accordingly;

“reprocessed” means the removal of chargeable soft drink from its packaging and its use for the purposes of the production of other soft drinks;

“return” means a return described in regulation 21;

“sufficient evidence” has the meaning given by regulation 17.

(2) In these Regulations, a reference to a “section”, “Part” or “Schedule” without more is a reference to a section or Part of, or Schedule to, the Finance Act 2017.

## PART 2

### Dilution ratios: criteria and determinations

#### **Criteria for determining a dilution ratio and an avoidance purpose in stating a dilution ratio**

3.—(1) The Commissioners must prescribe the criteria for determining—

- (a) a dilution ratio for the purposes of section 27(2)(b); and
- (b) whether the main purpose, or one of the main purposes, of stating a particular dilution ratio, or information by reference to which the dilution ratio may be calculated, is avoiding or reducing liability for soft drinks industry levy.

(2) Criteria prescribed under paragraph (1)(a) may include having regard to dilution ratios of comparable soft drinks.

(3) Criteria prescribed under paragraph (1)(b) may include having regard to any of the following

- (a) any change in the dilution ratio and the timing of that change;
- (b) whether or not—
  - (i) a change in the dilution ratio results in a lower levy liability;
  - (ii) the soft drink has been reformulated to replace added sugar ingredients with sweeteners and to what extent; and
  - (iii) the dilution ratio is different to that of any comparable soft drinks;
- (c) any evidence obtained by, or provided to, the Commissioners in relation to the particular dilution ratio; and
- (d) any failure of a person who is a liable person in respect of the soft drink to provide to the Commissioners, when requested to do so by the Commissioners, evidence in relation to the particular dilution ratio.

#### **Dilution ratio: notices of determination**

4.—(1) Where a dilution ratio is determined by the Commissioners, they must give notice of that determination as soon as practicable to each person who is a liable person in respect of the soft drink.

(2) The notice must also state—

- (a) the date of the determination;
- (b) the date from which the dilution ratio has effect;
- (c) how the dilution ratio was determined;
- (d) whether subsection (3) or (4) of section 27 applies to the determination; and
- (e) that Schedule 10 (appeals and reviews) applies to the determination.

## PART 3

### Sugar content and exempt soft drinks

#### Sugar content condition: fruit juice

- 5.—(1) The following are to be treated for the purposes of Part 2 as fruit juice—
- (a) fruit purée and concentrated fruit purée, as they are defined in regulation 3(1) of the Fruit Juice Regulations; and
  - (b) a product that complies with the specification in any of the following Schedules to the Fruit Juice Regulations—
    - (i) Schedule 2 (fruit juice), except that in paragraph 2 of that Schedule, “and without prejudice to entries numbers 4 and 7 of Schedule 11,” is to be treated as omitted;
    - (ii) Schedule 3 (fruit juice from concentrate);
    - (iii) Schedule 4 (concentrated fruit juice);
    - (iv) Schedule 5 (water extracted fruit juice); or
    - (v) Schedule 6 (dehydrated fruit juice and powdered fruit juice),and where the specification is made by reference to a listed EU instrument as amended from time to time, that specification also applies for the purposes of this sub-paragraph.
- (2) In paragraph (1)—
- (a) “the Fruit Juice Regulations” means the Fruit Juices and Fruit Nectars (England) Regulations 2013<sup>(2)</sup>; and
  - (b) “listed EU instrument” means—
    - (i) Council Directive 98/83/EC on the quality of water intended for human consumption<sup>(3)</sup>;
    - (ii) Regulation (EC) No 1935/2004 of the European Parliament and of the Council on materials and articles intended to come into contact with food<sup>(4)</sup>;
    - (iii) Regulation (EC) No 1925/2006 of the European Parliament and of the Council on the addition of vitamins and minerals and of certain other substances to foods<sup>(5)</sup>;
    - (iv) Regulation (EC) No 1332/2008 of the European Parliament and of the Council on food enzymes<sup>(6)</sup>; and
    - (v) Regulation (EC) No 1333/2008 of the European Parliament and of the Council on food additives<sup>(7)</sup>.

#### Sugar content condition: vegetable juice

- 6.—(1) The following are to be treated for the purposes of Part 2 as vegetable juice—
- (a) juice from vegetables;
  - (b) juice from concentrate from vegetables;
  - (c) concentrated juice from vegetables;

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(2) S.I. 2013/2775.

(3) OJ No L330, 5.12.1998, p 32, last amended by Commission Directive (EU) 2015/1787 (OJ No L 260, 7.10.2015, p 6).

(4) OJ No L 338, 13.11.2004, p 4, last amended by Regulation (EC) No 596/2009 of the European Parliament and of the Council (OJ No L 188, 18.7.2009, p 14).

(5) OJ No L 404, 30.12.2006, p 26, last amended by Commission Regulation (EU) 2017/1203 (OJ No L 173, 6.7.2017, p 9).

(6) OJ No L 354, 31.12.2008, p 7, last amended by Commission Regulation (EU) No 1056/2012 (OJ No L 313, 13.11.2012, p 9).

(7) OJ No L 354, 31.12.2008, p 16, last amended by Commission Regulation (EU) 2017/1399 (OJ No L 199, 29.7.2017, p 8).

- (d) water extracted juice from vegetables;
  - (e) dehydrated or powdered juice from vegetables;
  - (f) vegetable purée; and
  - (g) concentrated vegetable purée.
- (2) “Juice from vegetables” means the fermentable but unfermented product—
- (a) which is obtained from the edible part of a vegetable;
  - (b) which has the characteristic colour, flavour and taste typical of the juice of the vegetable from which it comes;
  - (c) which does not incorporate parts or components of pips, seeds or peel unless they cannot be removed by good manufacturing practice;
  - (d) which has not been manufactured using any treatment other than an authorised treatment; and
  - (e) to which no calorific mono-saccharides or di-saccharides have been added.
- (3) Juice from vegetables includes juice—
- (a) which is produced from one or more kinds of vegetables mixed together;
  - (b) which contains restored flavour, pulp and cells, extracts or edible oils (or any one or more of them) obtained by a suitable physical means from the same species of vegetable;
  - (c) which contains edible salts, spices, aromatic herbs and vinegar; and
  - (d) which is mixed with vegetable purée during production.
- (4) “Juice from concentrate from vegetables” means the product—
- (a) obtained by reconstituting concentrated juice from vegetables with potable water that meets the criteria set out in Council [Directive 98/83/EC](#) on the quality of water intended for human consumption, as those criteria are amended from time to time;
  - (b) prepared by a suitable physical process that maintains the essential physical, chemical, organoleptical and nutritional characteristics typical of the juice from vegetables produced from the species of vegetable from which it comes;
  - (c) which has not been manufactured using any treatment other than an authorised treatment; and
  - (d) to which no calorific mono-saccharides or di-saccharides have been added.
- (5) Juice from concentrate from vegetables includes products—
- (a) in which the concentrated juice from vegetables used in its production is mixed with—
    - (i) juice from vegetables;
    - (ii) vegetable purée; and
    - (iii) concentrated vegetable purée;
  - (b) which contain restored flavour, pulp and cells, extracts or edible oils (or any one or more of them) obtained by a suitable physical means from the same species of vegetable; and
  - (c) which contain edible salts, spices, aromatic herbs and vinegar.
- (6) “Concentrated juice from vegetables” means—
- (a) the product obtained from juice from vegetables by the physical removal of a specific proportion of its water content, being at least 50% where the product is intended for direct consumption;
  - (b) which has not been manufactured using any treatment other than an authorised treatment; and

- (c) to which no calorific mono-saccharides or di-saccharides have been added.
- (7) Concentrated juice from vegetables includes products which contain restored flavour, pulp and cells, extracts or edible oils (or any one or more of them) obtained by a suitable physical means from the same species of vegetable.
- (8) “Water extracted juice from vegetables” means the product—
- (a) obtained by diffusion with water of—
    - (i) pulpy whole vegetables whose juice cannot be extracted by any physical means; or
    - (ii) dehydrated whole vegetables;
  - (b) which has not been manufactured using any treatment other than an authorised treatment; and
  - (c) to which no calorific mono-saccharides or di-saccharides have been added.
- (9) “Dehydrated or powdered juice from vegetables” means the product —
- (a) obtained from juice from vegetables of one or more vegetable species by the physical removal of virtually all of its water content;
  - (b) which has not been manufactured using any treatment other than an authorised treatment; and
  - (c) to which no calorific mono-saccharides or di-saccharides have been added.
- (10) “Vegetable purée” means the fermentable but unfermented product obtained by a suitable physical process such as sieving, grinding or milling the edible part of whole or peeled vegetable without removing the juice, and to which no calorific mono-saccharides or di-saccharides have been added.
- (11) “Concentrated vegetable purée” means the product obtained from vegetable purée by the removal of a specific proportion of its water content, in respect of which, if flavour has been restored to it, such flavour has been recovered from the same species of vegetable, and to which no calorific mono-saccharides or di-saccharides have been added.
- (12) In this regulation—
- “authorised treatment” means a treatment which falls within the following paragraphs of Schedule 10 (authorised treatments) to the Fruit Juices and Fruit Nectars (England) Regulations 2013—
- (a) paragraph 1; and
  - (b) paragraph 2 but as if—
    - (i) reference to “fruit” where it first occurs were to “vegetable”; and
    - (ii) for “concentrated fruit juice” to the end of the paragraph were substituted “concentrated juice from vegetables, if the product obtained in this way is juice from vegetables or juice from concentrate from vegetables”;
- “pulp and cells” means the products obtained from the edible parts of the vegetable without removing the juice; and
- “vegetable” means any kind of vegetable (excluding tomatoes) that is sound and appropriately mature and—
- (a) fresh; or
  - (b) preserved by—
    - (i) physical means; or
    - (ii) a treatment, including a post-harvest treatment,
- and also includes aromatic herbs and aloe vera.

(13) In this regulation, reference to a flavour which is restored or recovered is a reference to a flavour—

- (a) which is obtained during the processing of vegetables by applying suitable physical processes (including squeezing, extraction, distillation, filtration, adsorption, evaporation, fractionation and concentration) to obtain, retain, preserve or stabilise the flavour quality; and
- (b) which is obtained from the edible parts of the vegetable.

### **Sugar content condition and exempt soft drinks: milk and milk-based drinks**

7.—(1) The following are to be treated for the purposes of Part 2 as milk—

- (a) drinking milk;
- (b) recombined milk;
- (c) reconstituted milk;
- (d) fermented milk;
- (e) buttermilk;
- (f) whey;
- (g) reconstituted whey; and
- (h) recombined whey.

(2) “Drinking milk” means the normal mammary secretion of milking animals obtained from one or more milkings, which has nothing added to it or extracted from it, other than as described in paragraph (3), and is intended for consumption as a liquid or for further processing.

(3) Drinking milk includes a product—

- (a) the natural fat content of which has been altered in order to meet a specification in point III of Part IV of Annex VII to Regulation (EU) No 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products<sup>(8)</sup>;
- (b) which is heat-treated or filtered, or both;
- (c) which has been enriched with milk proteins, mineral salts or vitamins, in accordance with Regulation (EC) No 1925/2006 of the European Parliament and of the Council on the addition of vitamins and minerals and of certain other substances to foods; or
- (d) in which the lactose content has been reduced by conversion to glucose and galactose by the addition of lactase, or removal of lactose.

(4) “Recombined milk” means a product resulting from combining only milk-fat and milk-solids-non-fat in their preserved forms, together with the addition of such amount of water (if any) as may be required to re-establish the ratio which those constituents have in drinking milk.

(5) “Reconstituted milk” means a product resulting from the addition only of water to the dried or concentrated form of drinking milk, in such amount as may be required to re-establish the ratio which water bears to solids in drinking milk.

(6) “Fermented milk” means an acidified product which is produced by fermentation of drinking milk, recombined milk or reconstituted milk, or a mixture of them, and in which—

- (a) after pasteurisation, lactic acid has been produced by starter cultures of microorganisms; and

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<sup>(8)</sup> OJ No L 347, 20.12.2013, p 671, last amended by Commission Delegated Regulation (EU) 2016/1226 (OJ L No 202, 28.7.2016, p 5).

(b) after fermentation, those microorganisms are live, viable and abundant, unless the product has been subject to heat treatment after fermentation.

(7) Fermented milk is not milk for the purposes of section 29 if calorific mono-saccharides or di-saccharides are added in its production, other than those which were present in the drinking milk, recombined milk or reconstituted milk from which it was produced.

(8) “Buttermilk” means the product which—

(a) remains after the butter-making process has been applied to drinking milk, recombined milk, reconstituted milk, cream, fermented milk or a mixture of them and which contains less than 0.6% milk fat; or

(b) is produced by fermentation of drinking milk, recombined milk or reconstituted milk, which fermentation occurs—

(i) spontaneously by the action of lactic acid-forming bacteria or aroma-forming bacteria; or

(ii) by inoculation of heated drinking milk, recombined milk or reconstituted milk with pure bacterial cultures,

and includes such a product which is pasteurised or sterilised.

(9) Buttermilk is not milk for the purposes of section 29 if calorific mono-saccharides or di-saccharides are added in its production, other than those which were present in the drinking milk, recombined milk, reconstituted milk, cream or fermented milk from which it was produced.

(10) “Whey” means the fluid separated from the curd which—

(a) is obtained during the manufacture of cheese, casein or similar products; and

(b) results from the coagulation, through the action of rennet type enzymes, other suitable enzymes or acid, of drinking milk, recombined milk or reconstituted milk.

(11) Whey is not milk for the purposes of section 29 if calorific mono-saccharides or di-saccharides are added in its production, other than those which were present in the drinking milk, recombined milk or reconstituted milk from which it was produced.

(12) “Reconstituted whey” means a product resulting from the addition only of water to the dried or concentrated form of whey in the amount necessary to re-establish the ratio which water bears to solids in whey.

(13) “Recombined whey” means a product resulting from combining only the solid constituents of whey in their preserved forms, together with the addition of such amount of water (if any) as may be required to re-establish the ratio which those constituents have in whey.

(14) In paragraphs (5) and (12) references to the “dried or concentrated form” of drinking milk or whey are to the product obtained by only the removal of water from the drinking milk or whey.

### **Exempt soft drinks: milk substitute drinks**

**8.—**(1) For the purposes of section 30(3)(a), the specified quantity of calcium is 120 milligrams per 100 millilitres of soft drink.

(2) The conditions specified for the purposes of section 30(3)(b) are that the soft drink—

(a) is derived from a plant, including legumes, cereals, nuts or seeds;

(b) is capable of being used for all or most of the uses for which drinking milk is used;

(c) has a consistency which is the same as or similar to drinking milk; and

(d) is not carbonated.

(3) In paragraph (2) “drinking milk” has the meaning given in regulation 7.

### Exempt soft drinks: alcohol substitute drinks

- 9.—(1) The conditions specified for the purposes of section 30(4)(b) are—
- (a) condition 1; and
  - (b) one or more of conditions 2, 3 and 4.
- (2) Condition 1 is that—
- (a) the soft drink—
    - (i) is in packaging comparable to, and marketed in a way that is comparable to, the particular kind of alcoholic beverage to which it is similar; and
    - (ii) is not marketed in a way which is directed at, or is likely to appeal particularly to, people under eighteen years of age; and
  - (b) when the soft drink is advertised or sold, it is advertised or sold as a direct replacement for the particular kind of alcoholic beverage to which it is similar.
- (3) Condition 2 is that the soft drink is made from an alcoholic beverage by a process of de-alcoholisation by which the alcoholic strength of the beverage is reduced to 1.2% or lower.
- (4) Condition 3 is that—
- (a) the soft drink is manufactured using a fermentation or distillation process during which—
    - (i) alcohol is produced; but
    - (ii) the alcoholic strength of the product of fermentation or distillation never exceeds 1.2%; and
  - (b) such product is not diluted or mixed with any other substance, unless, in the case of a product of distillation, that substance has dissolved into the product.
- (5) Condition 4 is that the soft drink is manufactured by blending an alcoholic beverage of cider, beer, wine or made-wine with fruit juice, with or without the addition of water or other ingredients, to make a soft drink that is similar to the alcoholic beverage used in its production.

### Exempt soft drinks: for medicinal or other purposes

- 10.—(1) Paragraph (2) applies to a product for use for—
- (a) medicinal purposes which meets the description in paragraph (3)(a);
  - (b) infants or young children which meets the description in paragraph (3)(b), (c) or (d); or
  - (c) total diet replacement for weight control which meets the description in paragraph (3)(e).
- (2) To the extent that the product is, or is capable of being, a soft drink, it is an exempt soft drink.
- (3) The descriptions of products are—
- (a) medical foods, as defined in regulation 2 of the Medical Food (England) Regulations 2000<sup>(9)</sup>, which meet the specification in regulation 3(1)(a) of those Regulations;
  - (b) infant formula, as defined in Article 2(c) of Commission Directive 2006/141/EC on infant formulae and follow-on formulae and amending Directive 1999/21/EC<sup>(10)</sup>, which complies with regulations 5, 6, 8, 10, 11, 12, 14(1), (2) or (3) and 15 of the Infant and Follow-on Formula (England) Regulations 2007<sup>(11)</sup>;
  - (c) follow-on formula, as defined in Article 2(d) of Commission Directive 2006/141/EC on infant formulae and follow-on formulae and amending Directive 1999/21/EC, which

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<sup>(9)</sup> S.I. 2000/845. Relevantly amended by S.I. 2007/3521 in respect of the definition of “Directive” in regulation 2. That definition is used in the definition of “medical food” and in regulation 3(1)(a).

<sup>(10)</sup> OJ L No 401, 30.12.2006, p 1.

<sup>(11)</sup> S.I. 2007/3521. Relevant amending instruments are S.I. 2011/1043 and 2013/3243.



- complies with regulations 5, 7, 9, 10, 11, 12, 14(1), (2) or (3) and 16 of the Infant and Follow-on Formula (England) Regulations 2007;
- (d) baby foods and processed cereal-based foods, as defined in the Processed Cereal-based Foods and Baby Foods for Infants and Young Children (England) Regulations 2003<sup>(12)</sup>, which comply with the requirements of regulations 5 to 7 of those Regulations;
- (e) specially formulated foods intended for use in energy-restricted diets for weight reduction which—
- (i) comply with the compositional requirements in Schedule 1 to the Foods Intended for Use in Energy Restricted Diets for Weight Reduction Regulations 1997<sup>(13)</sup> as it applies in England; and
  - (ii) when used as instructed by the manufacturer, replace the whole of the total daily diet.

### **Sugar content condition: designated food labelling obligation**

**11.** The mandatory nutrition declarations in Articles 9(1) and 30(1)(b) of Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers<sup>(14)</sup> are designated for the purposes of Part 2 as food labelling obligations<sup>(15)</sup>.

## **PART 4**

### **Secondary warehousing**

#### **Compliant warehouses**

- 12.**—(1) The following conditions and requirements are specified in respect of premises on which chargeable soft drinks may be stored before the occurrence of a chargeable event.
- (2) The liable person must notify the Commissioners in accordance with paragraph (3) of—
- (a) the address of the premises;
  - (b) whether or not the premises are packaging premises of the liable person; and
  - (c) if the premises are not packaging premises of the liable person—
    - (i) the name and address of the person who provides warehousing services to the liable person at the premises; and
    - (ii) where applicable, that person’s company registration number and registered office.
- (3) A notification under paragraph (2) must be made—
- (a) in writing;
  - (b) before the liable person uses the premises for the storage of chargeable soft drinks; and
  - (c) in such form and manner as the Commissioners may prescribe, including electronically, subject to such exceptions as they may prescribe.

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<sup>(12)</sup> S.I. 2003/3207.

<sup>(13)</sup> S.I. 1997/2182. Schedule 1 is amended by S.I. 2016/688 (in relation to England).

<sup>(14)</sup> OJ L No 304, 22.11.2011, p 18.

<sup>(15)</sup> See the definitions of “sugars” in section 59(1) which refers to a designated food labelling obligation defined in subsection (3), being an obligation designated by regulations made by the Commissioners.

## PART 5

### Registration

#### **Form, manner and content of notifications and applications**

13.—(1) The Commissioners must prescribe—

- (a) the form and manner in which a person—
  - (i) is to give a notification under section 44; or
  - (ii) is to make an application under section 45; and
- (b) the information to be included with such a notification or application.

(2) The Commissioners may prescribe that such a notification or an application is to be given electronically, subject to such exceptions as they may prescribe.

(3) A person to whom section 44(1) or 45 applies must as prescribed give the notification or make the application and include the information prescribed.

(4) The information prescribed in relation to the person giving the notification or making the application must include—

- (a) name, address and, if applicable, company registration number;
- (b) address of the principal place of business;
- (c) whether the person is a producer, packager or importer;
- (d) in the case of a producer, whether or not the producer is a small producer;
- (e) in the case of a small producer, whether condition A or B is met, as provided by section 38;
- (f) the estimated volume of soft drinks, in litres, which the person expects to produce, package or import in the period of 12 months commencing with the date on which the liability to notify arose or, in the case of an application, the date of the application;
- (g) the amount of that volume to which the exemption in section 37 or the higher or lower rate of levy is expected to apply;
- (h) the estimated amount of soft drinks industry levy payable in that period of 12 months; and
- (i) banking details.

(5) The Commissioners may prescribe that the notification or application be accompanied by a declaration that the matters stated in the notification or application are true and accurate.

(6) The Commissioners may require a person to give additional information concerning a notification or application to that prescribed.

#### **Correction of the register**

14.—(1) Paragraph (2) applies to a person—

- (a) who is registered; or
- (b) who has made a notification under section 44 or an application under section 45, which has not been refused, but who is not registered.

(2) Such a person must notify the Commissioners as soon as practicable of—

- (a) any information given to the Commissioners which is inaccurate, inadequate or misleading; or
- (b) any change in circumstances,

which may require a correction to be made to an entry made, or to be made, on the register.

(3) A notification under paragraph (2) must be given in writing and must be made electronically if the Commissioners so prescribe, subject to such exceptions as they may prescribe.

(4) The Commissioners may correct the register as they see fit.

## PART 6

### Tax credits

#### Tax credits

**15.**—(1) A liable person is entitled to a tax credit if, after a charge to soft drinks industry levy has arisen in relation to chargeable soft drinks, any of cases 1 to 3 applies to those drinks.

(2) Case 1 applies where the liable person or another person exports the chargeable soft drinks from the United Kingdom.

(3) Case 2 applies where the liable person reasonably expects that another person will export the chargeable soft drinks from the United Kingdom.

(4) Case 3 applies where the chargeable soft drinks are lost or destroyed by virtue of the chargeable soft drinks being destroyed, disposed of as waste, reprocessed or spilled and incapable of further use.

(5) A liable person must make a claim for the tax credit.

(6) The tax credit is the amount (“the credit amount”) equal to the amount of soft drinks industry levy charge which applies to the chargeable soft drinks at the time of the chargeable event which occurs in relation to them.

(7) In respect of case 1, a claim for tax credit may be made in the return for an accounting period in which the liable person has sufficient evidence that the chargeable soft drinks have been exported.

(8) In respect of case 2, a claim for tax credit must meet the requirements in regulation 16.

(9) In respect of case 3, a claim for tax credit may be made in the return for an accounting period in which the liable person has sufficient evidence that the chargeable soft drinks are lost or destroyed.

(10) A claim for tax credit must—

(a) show separately the total of the credit amounts for—

(i) cases 1 and 2; and

(ii) case 3; and

(b) identify how much of each total is in respect of soft drinks industry levy charged at the rate provided by section 36(1)(a) and how much at the rate provided by section 36(1)(b).

(11) No claim may be made for a tax credit in respect of chargeable soft drinks more than two years after the date on which the chargeable event arose in respect of those drinks.

(12) In cases 1 and 2, an export of chargeable soft drink includes where the chargeable soft drinks are made available to be sold or provided free of charge by a person in the course of that person carrying on the business of transporting passengers between the United Kingdom and a place outside of the United Kingdom.

#### Case 2 – requirements

**16.**—(1) The claim for tax credit in respect of case 2 may be made in the return for an accounting period (“AP”) in which the liable person holds a reasonable expectation that the chargeable soft drinks in respect of which the levy has arisen are to be exported.

(2) The amount of the tax credit is a reasonable estimate of the amount (“the estimated amount”) to be exported in AP or the following accounting period (“AP+1”) or both.

(3) Paragraph (4) applies if by the end of AP+1 the liable person does not have sufficient evidence to show that the estimated amount has been exported.

(4) Where this paragraph applies, so much of the tax credit claimed in AP in respect of the estimated amount for which the liable person does not have sufficient evidence of export must be added back in the return for AP+1.

### **Sufficient evidence**

**17.**—(1) In regulations 15 and 16, “sufficient evidence” means the prescribed evidence showing that the case applicable to the chargeable soft drinks has been met.

(2) The Commissioners must prescribe what amounts to sufficient evidence in each case.

(3) The matters which may be prescribed include—

- (a) in respect of cases 1 and 2, evidence of export which applies for the purposes of excise, a duty or value added tax or which would apply were the chargeable soft drinks subject to those matters; and
- (b) in respect of case 3, any of the matters in respect of which records are required to be kept under regulation 26.

### **Records in relation to tax credits**

**18.**—(1) A liable person who makes a claim for a tax credit must keep a record of the following in respect of the claim.

(2) The volume (in litres) of chargeable soft drinks to which the claim relates which are within section 26(1)(a) and, in respect of that volume, how much—

- (a) meets the higher sugar threshold in section 36(2); and
- (b) does not meet the higher sugar threshold in section 36(2).

(3) The volume (in litres) of prepared drink to which the claim relates that would result from chargeable soft drinks within section 26(1)(b) and, in respect of that volume, how much—

- (a) meets the higher sugar threshold in section 36(2); and
- (b) does not meet the higher sugar threshold in section 36(2).

(4) In respect of chargeable soft drinks within paragraphs (2) and (3)—

- (a) the total amount of the tax credit claimed; and
- (b) how much of the total is in respect of soft drinks industry levy charged at the rate provided by section 36(1)(a) and how much at the rate provided by section 36(1)(b).

## **PART 7**

### **Accounting periods, payment, returns and accounts**

#### **Accounting periods**

**19.**—(1) A liable person must make payments of soft drinks industry levy in respect of each accounting period.

(2) The accounting periods are the three month periods ending with 31st March, 30th June, 30th September and 31st December.

## Payment

**20.**—(1) A liable person must pay the total amount of soft drinks industry levy payable in respect of an accounting period within the period of 30 days beginning with the last day of the accounting period.

- (2) The total amount is the amount required to be stated in the return in respect of the period~~(16)~~.
- (3) Payment must be made by the method prescribed.

## Returns

**21.**—(1) For each accounting period, a liable person must make a return to the Commissioners and do so within the period of 30 days beginning with the last day of the accounting period.

(2) A return must be dated and made in the form and manner prescribed by the Commissioners, including electronically, subject to such exceptions as they may prescribe.

(3) A return must include the matters prescribed by the Commissioners.

## Content of returns

**22.**—(1) The Commissioners must prescribe the matters to be included in a return, in addition to the information required under regulation 15(10).

(2) The matters—

(a) must include—

- (i) the total amount of soft drinks industry levy payable in respect of the accounting period in respect of which the return is made; and
- (ii) the method for payment, which may be electronic, subject to such exceptions as may be prescribed; and

(b) may include—

- (i) any or all of the other information required to be included in an account;
- (ii) the information required in relation to corrections required to a previous return; and
- (iii) a declaration by the liable person that the matters stated in the return are true and accurate.

(3) The Commissioners may prescribe that a digital facility provided by the Commissioners must be used for the calculation of the amount of soft drinks industry levy shown in the return, subject to such exceptions as they may prescribe.

## Requirement to keep accounts

**23.**—(1) For each accounting period, a liable person must keep accounts for the purposes of soft drinks industry levy.

(2) The accounts must include details of the following quantities—

- (a) where the liable person falls within section 35(1), the quantity of chargeable soft drinks packaged to which a chargeable event in section 32(2) or (3) applies;
- (b) where the liable person falls within section 35(2), the quantity of chargeable soft drinks imported to which a chargeable event in section 33(2) or (8) applies; and

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(16) Part 1 of Schedule 8 makes provision for the Commissioners to raise an assessment if there is a failure to provide a return as required.

- (c) where the liable person falls within section 35(3), the quantity of chargeable soft drinks imported to which a chargeable event in section 33(9) applies.
- (3) Those quantities must be shown in litres.
- (4) The accounts must show in respect of those quantities, the quantity subject to the small producer exemption described in section 37.
- (5) The accounts must show separately in respect of each of the quantities described in paragraph (2)—
  - (a) the rate of soft drinks industry levy which is applicable; and
  - (b) the amount of soft drinks industry levy payable.
- (6) The accounts must include details of—
  - (a) how any tax credit is calculated;
  - (b) the case which applies to any tax credit; and
  - (c) any adjustments or corrections made in respect of any previous accounting period, including identification of the period.
- (7) The accounts must show the total of soft drinks industry levy payable in respect of the accounting period.
- (8) The liable person must preserve the accounts for an accounting period for the period of 6 years beginning with the last day of the accounting period.

## PART 8

### Records

#### **Records supporting returns and accounts**

- 24.** A liable person must keep records in support of the matters included in—
- (a) each return required to be made by that person under regulation 21, in addition to the records required to be kept by regulation 18; and
  - (b) accounts required to be kept by that person under regulation 23.

#### **Dilution ratio: records**

**25.** For each accounting period, a liable person must keep records relating to the dilution ratio of soft drinks in respect of which the person is liable to pay soft drinks industry levy during that period, including details of when any changes are made to that ratio, what change was made and why it was made.

#### **Drinks lost or destroyed records**

**26.—(1)** For each accounting period, a liable person must keep records of chargeable soft drinks (“drinks lost or destroyed”) which during that period are destroyed, disposed of as waste, reprocessed or spilled and incapable of further use.

- (2) The records must include—
- (a) the quantity (in litres) of drinks lost or destroyed;
  - (b) how much of that quantity met or did not meet the higher sugar threshold;
  - (c) the relevant levy rate for the drinks lost or destroyed;

- (d) the date the soft drinks became drinks lost or destroyed; and
- (e) the place and cause of the drinks becoming drinks lost or destroyed.

### **Warehousing records**

**27.**—(1) Paragraphs (2) and (3) apply to a liable person within section 35(1) or (2).

(2) For each accounting period, such a liable person must keep records of the address of each premises where that person stored chargeable soft drinks<sup>(17)</sup> during that period and whether or not those premises were a compliant warehouse<sup>(18)</sup>.

(3) The records must include for each delivery of chargeable soft drinks to those premises—

- (a) the quantity (in litres) delivered;
- (b) the date of delivery;
- (c) the date on which the storage at the premises ended; and
- (d) details of the transporter which—
  - (i) made the delivery to the premises; and
  - (ii) transported the drinks from the premises.

### **Preservation of records**

**28.**—(1) Paragraph (2) applies to—

- (a) a liable person to whom regulation 18, 24, 25, 26 or 27 applies; and
- (b) records which that person is required to keep under any of those regulations.

(2) The liable person must preserve the records for the period of 6 years beginning with the last day of the accounting period to which the records relate.

### **Small producers and records**

**29.**—(1) A person who is a small producer<sup>(19)</sup> who is registered or who is liable to be registered must keep records of the chargeable soft drinks packaged by or on behalf that person in each accounting period.

(2) Such a person must preserve the records for the period of 6 years beginning with the last day of the accounting period to which the records relate.

## **PART 9**

### **DEATH, INCAPACITY OR INSOLVENCY**

#### **Death, incapacity or insolvency**

**30.**—(1) Paragraph (2) applies where a liable person—

- (a) who is an individual—
  - (i) has died or become incapacitated; or
  - (ii) has become bankrupt; or

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<sup>(17)</sup> See section 28.

<sup>(18)</sup> See section 32(5).

<sup>(19)</sup> See section 38(1).

(b) is subject to winding-up, receivership, administration or an equivalent procedure.

(2) The person (“P”) who—

(a) in the case of an individual, carries on the business of the liable person concerning chargeable soft drinks on behalf of, or in succession to, the individual; or

(b) acts as the liquidator, receiver or administrator in relation to the business of the liable person concerning chargeable soft drinks or acts in an equivalent capacity,

must notify the Commissioners of that fact no later than three months after the date on which P proceeded to carry on the business or proceeded to act as described in relation to the business.

(3) A notification under paragraph (2) must be in writing and include evidence of P’s authority to carry on, or act in relation to, the business.

(4) A failure by P to comply with paragraph (2) is to be treated as if it were a failure by P to comply with section 44(1).

(5) The Commissioners may treat P as the liable person for a period of up to six months from the date by which notification is required.

(6) The Commissioners may extend that period by written notice to P for such additional period as they see fit.

*Jim Harra*

*Penny Ciniewicz*

Two of the Commissioners for Her Majesty’s  
Revenue and Customs

15th January 2018



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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

The Regulations make provision in relation to soft drinks industry levy (“the levy”) introduced by the Finance Act 2017 (c. 10) (“the Act”).

Regulation 1 provides for commencement and regulation 2 lists definitions used in the Regulations.

Regulation 3 requires the Commissioners of Her Majesty’s Revenue and Customs (“the Commissioners”) to prescribe criteria for determining dilution ratios and for determining whether the main purpose of stating a dilution ratio is to avoid or reduce liability for the levy.

Regulation 4 requires the Commissioners to give notice of dilution ratios they determine for a soft drink to each person liable to pay the levy on that drink.

For the purposes of Part 2 of the Act, regulation 5 provides for what is to be treated as fruit juice, regulation 6 provides for what is to be treated as vegetable juice and regulation 7 provides for what is to be treated as milk.

Section 30 of the Act defines those drinks which are exempt soft drinks and regulation 8 states the specified quantity of calcium of an exempt soft drink which is a milk substitute drink and sets out the conditions which must be met for a drink to be a milk substitute drink.

Regulation 9 sets out the conditions which must be met for a drink to be an alcohol substitute drink, which is an exempt soft drink.

Regulation 10 describes other drinks which are exempt soft drinks, being drinks for medicinal purposes, for infants or young children and drinks used as diet replacement for weight control.

Regulation 11 designates certain nutrition declarations for the purposes of Part 2 of the Act, further to section 59(3) of the Act.

Regulation 12 specifies conditions and requirements in respect of compliant warehouses (see section 32(5) of the Act).

Regulation 13 requires the Commissioners to prescribe the form manner and content of a notification under section 44 of the Act (persons liable to be registered under sections 41, 42 or 43 of the Act) or an application under section 45 of the Act (small producers able to apply for voluntary registration). Persons to whom those sections apply must make the notification or application as prescribed. (Small producers are defined in section 38(1) of the Act).

Regulation 14 provides for making of corrections to the register required to be maintained by the Commissioners under section 40 of the Act.

Regulation 15 provides for the cases in which a person liable to pay the levy may claim a credit in respect of the levy (“a tax credit”). The cases are in respect of the export of drinks from the United Kingdom and in respect of drinks lost or destroyed. The procedure for claiming a tax credit is set out. Regulation 16 makes further provision for claiming a tax credit where it is expected that a person will export chargeable soft drinks.

Regulation 17 provides for what amounts to “sufficient evidence” in order to make a claim for a tax credit. Regulation 18 sets out records required to be kept in relation to claims for tax credits.

Regulation 19 provides that persons liable to pay the levy must do so in respect of the three-monthly accounting periods set out.

Regulation 20 requires payment of the levy within 30 days of the end of an accounting period.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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Regulation 21 requires persons liable to pay the levy to make returns to the Commissioners for each accounting period and provides for the date by which returns must be made. Regulation 22 provides for the contents of returns.

Regulation 23 requires persons liable to pay the levy to keep accounts for each accounting period and provides for the contents of those accounts and the period for which accounts must be preserved.

Regulation 24 requires records to be kept in support of matters included in returns and accounts.

Regulation 25 requires persons liable to pay the levy in respect of soft drinks to keep records of the dilution ratios of the drinks.

Regulation 26 provides for the records to be kept in respect of lost or destroyed soft drinks.

Regulation 27 provides for the records to be kept in relation to warehousing.

Regulation 28 provides for the preservation period of records which a liable person is required to keep.

Regulation 29 provides for the records to be kept and preserved by small producers.

Regulation 30 provides for notification to the Commissioners in circumstances where a person liable to pay the levy has died, become bankrupt or incapacitated or is subject to a form of insolvency procedure. A person who is required to give a notification but who fails to do so is to be treated as a person who fails to comply with section 44(1) of the Act (obligation to notify of a liability to be registered) and commits an offence under section 51(1) of the Act.

A Tax Information and Impact Note has not been prepared for this Instrument as it contains no substantive changes to tax policy.