
DRAFT STATUTORY INSTRUMENTS

2023 No.

**The Economic Crime (Anti-Money Laundering)
Levy (Amendment) Regulations 2023**

Insertion of new Parts 7 to 10

11. After Part 6 (death, incapacity or insolvency), insert—

“PART 7

Information Requirements

Requirement to provide information or documents where the appropriate collection authority is the Financial Conduct Authority or the Gambling Commission

16.—(1) This regulation applies where the appropriate collection authority is the Financial Conduct Authority or the Gambling Commission.

(2) A person liable to pay the levy must supply the appropriate collection authority with such information or documents as the appropriate collection authority may request in connection with the levy.

(3) A request under paragraph (2) may specify—

- (a) the form and manner in which the information or documents are to be supplied;
- (b) the period within which the information or documents are to be supplied.

Duty to keep and preserve records

17.—(1) A person liable to pay the levy must—

- (a) keep such records as may be needed to enable them to make a complete and accurate economic crime (anti-money laundering) levy return,
- (b) preserve those records until at least the end of the relevant day, and
- (c) preserve those records in a medium that allows the storage of information in a way that is accessible for future reference by the appropriate collection authority when the appropriate collection authority is carrying out functions under Part 3 of the Act or under these Regulations.

(2) In paragraph (1)(b), “relevant day” means—

- (a) the sixth anniversary of the end of the period for which the person may be required to make an economic crime (anti-money laundering) levy return, or
- (b) such earlier day as may be specified in writing by the appropriate collection authority (and different days may be specified for different cases).

(3) In paragraph (1)(c), the obligation to ensure that storage is accessible for future reference by the appropriate collection authority includes the requirements that—

- (a) the appropriate collection authority must be able to access the record readily,
- (b) the appropriate collection authority must be able to easily ascertain—
 - (i) if any correction or other amendment has been made to a record, and
 - (ii) the content of any record prior to such correction or amendment, and
- (c) it must not be possible for any record to be otherwise manipulated or altered.

PART 8

Repayment of overpaid levy

Repayment of overpaid levy

18.—(1) Subject to paragraph (2), where a person has paid an amount of levy which was not due, the appropriate collection authority must, on the making of a claim by that person, repay the amount.

(2) The appropriate collection authority is not liable, on any claim for a repayment of levy, to repay any amount where—

- (a) the appropriate collection authority is the Financial Conduct Authority and the amount in question was paid more than 2 years before the making of the claim;
- (b) the appropriate collection authority is the Gambling Commission or HMRC Commissioners and the amount in question was paid more than 4 years before the making of the claim;
- (c) the amount in question was paid as a result of the person liable to pay the levy not taking steps under the Corporation Tax Acts to reduce its revenue⁽¹⁾;
- (d) the person liable to pay the levy—
 - (i) could have reduced the amount of levy due by making an amendment to an economic crime (anti-money laundering) levy return within a period which has now expired, and
 - (ii) knew, or ought reasonably to have known, before the end of that period that such an amendment could have been made;
- (e) the claim is made on grounds that have been put to a tribunal or court in the course of an appeal or by way of application for judicial review;
- (f) the person liable to pay the levy knew, or ought reasonably to have known, of the grounds for the claim before the latest of the following—
 - (i) the date on which an appeal or application for judicial review by the person liable to pay the levy relating to the amount paid in the course of which the ground could have been put forward (a “relevant appeal or judicial review”) was determined by a tribunal or court (or is treated as having been so determined),
 - (ii) the date on which the person liable to pay the levy withdrew a relevant appeal or judicial review to a court or tribunal, and
 - (iii) the end of the period in which the person liable to pay the levy was entitled to make a relevant appeal or judicial review to a tribunal or court;
- (g) the amount in question was paid—

(1) “Revenue” is defined in section 65(1) of the Finance Act 2022 as having the meaning given in section 57(7) of that Act.

- (i) in consequence of proceedings enforcing the payment of that amount brought against the person liable to pay the levy by an appropriate collection authority, or
 - (ii) in accordance with an agreement between the person liable to pay the levy and an appropriate collection authority settling such proceedings;
 - (h) the amount in question was paid by reason of a mistake in calculating the revenue of a person liable to pay the levy, but that calculation was in accordance with the practice generally prevailing at the time.
- (3) Where the appropriate collection authority is the Financial Conduct Authority or the Gambling Commission, no interest is payable on any repaid levy.

Claim for repayment of overpaid levy

- 19.**—(1) A claim for a repayment under regulation 18(1) must—
- (a) contain such information, be in such form and be made in such a manner as is specified in a notice published by the appropriate collection authority, and not withdrawn by a further notice, and
 - (b) include a declaration by the person making the claim that the claim is, to the best of that person’s knowledge, complete and accurate.
- (2) Where the person liable to pay the levy is the responsible partners of a partnership, the responsible partners must make a claim in the name of the partnership.

PART 9

Enforcement

Financial penalties

- 20.**—(1) An appropriate collection authority may impose a financial penalty on a person liable to pay the levy where that person fails to—
- (a) submit an economic crime (anti-money laundering) levy return by—
 - (i) where the appropriate collection authority is the Gambling Commission or the HMRC Commissioners, the due date, or
 - (ii) where the appropriate collection authority is the Financial Conduct Authority, the FCA return date;
 - (b) pay the levy by the due date;
 - (c) make a complete and accurate economic crime (anti-money laundering) levy return such that a lower amount of levy has been charged for a financial year than the amount determined in accordance with section 54 of the Act;
 - (d) notify the appropriate collection authority in writing of an under-assessment of the levy;
 - (e) notify the appropriate collection authority in writing that an amount of levy, which could include an amount of repayment interest, has been repaid that ought not to have been repaid;
 - (f) comply with a request for information or documents under regulation 16;
 - (g) comply with record keeping requirements under regulation 17;

- (h) submit the economic crime (anti-money laundering) levy return by the date which is 3 months after the due date or the FCA return date, following a failure under sub-paragraph (a);
 - (i) pay the levy by the date which is 30 days after the due date, following a failure under sub-paragraph (b);
 - (j) comply with a request for information or documents under regulation 16 by the date which is 3 months after the end of the period for compliance given in the request, following a failure under sub-paragraph (f);
 - (k) pay the levy by the date which is 3 months after the due date, following a failure under sub-paragraph (i).
- (2) A financial penalty may be imposed under this regulation in respect of each and every failure mentioned in paragraph (1).
- (3) But an appropriate collection authority may not impose a financial penalty where—
- (a) the person liable to pay the levy satisfies the appropriate collection authority that they had a reasonable excuse for the failure;
 - (b) in the case of a failure referred to in paragraph (1)(g), the appropriate collection authority is satisfied that any facts which the appropriate collection authority reasonably required to be proved, and which would have been proved by the records, are proved by other documentary evidence supplied to the appropriate collection authority.
- (4) Where a person had a reasonable excuse for a failure but the excuse has ceased, that person is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

Amount of financial penalty

21. In the Schedule, in the table—

- (a) column 1 states the provision in regulation 20 under which a penalty may be imposed, and
- (b) the amount of the penalty which may be imposed is the amount specified in or determined in accordance with the corresponding entry in column 2.

Penalty notices

22.—(1) Where an appropriate collection authority decides to impose a financial penalty under regulation 20, the appropriate collection authority must give a notice imposing the penalty (“a penalty notice”).

(2) A penalty notice must include—

- (a) the amount of the financial penalty;
- (b) the period for payment of the penalty in accordance with regulation 24;
- (c) information about the ability to request a review and—
 - (i) where the appropriate collection authority is the Financial Conduct Authority, the right to apply for judicial review;

- (ii) where the appropriate collection authority is the Gambling Commission or the HMRC Commissioners, the right of appeal including the time limit within which the appeal must be brought to the tribunal⁽²⁾.
- (3) A penalty notice may be withdrawn by the appropriate collection authority at any time by giving notice in writing to the person to whom the penalty notice was given.

Time limit for imposing a penalty

23. A penalty notice must be given within the period of 4 years beginning with the due date.

Payment of penalty

24. A penalty imposed in accordance with regulation 20 must be paid by the date which is 30 days after the date of the penalty notice.

Recovery of unpaid amounts by the HMRC Commissioners

25. Where an amount of unpaid levy, unpaid late payment interest or unpaid penalty is due to another appropriate collection authority, the HMRC Commissioners may, on request by that other appropriate collection authority, treat such amounts as if the HMRC Commissioners were the appropriate collection authority in respect of those amounts for the purposes of collection and recovery of those unpaid amounts.

PART 10

Reviews and Appeals

Right to review where the HMRC Commissioners are the appropriate collection authority

26.—(1) This regulation applies where the appropriate collection authority is the HMRC Commissioners.

(2) The HMRC Commissioners must offer a person liable to pay the levy a review of a decision that is an appealable decision of the HMRC Commissioners.

(3) The offer of a review must be made by notice to the person liable to pay the levy at the same time as the appealable decision is notified.

(4) If a person liable to pay the levy accepts the offer of a review, they must notify the HMRC Commissioners in writing of that acceptance within the period of 30 days beginning with—

- (a) the day on which the appealable decision is notified, or
 - (b) such later day as is set out in a notice, or a further notice, sent by the HMRC Commissioners to the person liable to pay the levy to extend the period of time in which the offer of a review can be accepted.
- (5) The HMRC Commissioners—
- (a) must review a decision if they receive a notification in accordance with paragraph (4), but

(2) “Tribunal” is defined in section 65(1) of the Act and means the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal.

- (b) may not review a decision if an appeal has been made.

Review out of time

- 27.**—(1) The HMRC Commissioners must review a decision if—
- (a) the person liable to pay the levy does not accept the offer of a review within the time allowed under regulation 26(4),
 - (b) the person liable to pay the levy notifies the HMRC Commissioners in writing requesting a review out of time,
 - (c) the HMRC Commissioners are satisfied that the person liable to pay the levy had a reasonable excuse for not accepting the offer within the time allowed, and
 - (d) the HMRC Commissioners are satisfied that the person liable to pay the levy made the request without unreasonable delay after the excuse had ceased to apply.
- (2) The HMRC Commissioners may not review a decision if an appeal has been made.

Review procedure

- 28.**—(1) Where the HMRC Commissioners must review a decision, the HMRC Commissioners must, within the review period—
- (a) review the appealable decision,
 - (b) conclude that the appealable decision is to be upheld, varied or cancelled, and
 - (c) give the person liable to pay the levy notice of the conclusions of the review, with reasons.
- (2) Where the HMRC Commissioners do not give notice of the conclusions of the review in accordance with paragraph (1)(c) within the review period—
- (a) the review is to be treated as having concluded that the appealable decision is upheld, and
 - (b) the HMRC Commissioners must notify the person liable to pay the levy of the conclusion which the review is treated as having reached.
- (3) In this regulation “the review period” means—
- (a) where the HMRC Commissioners have been notified in accordance with regulation 26(4) that a review is required, the period of 45 days beginning with the date on which the HMRC Commissioners were so notified,
 - (b) where the HMRC Commissioners have decided to undertake a review in accordance with regulation 27(1), the period of 45 days beginning with the date on which the HMRC Commissioners made that decision, or
 - (c) such other period as the HMRC Commissioners and the person liable to pay the levy may agree.

Reviews where the appropriate collection authority is the Financial Conduct Authority or the Gambling Commission

- 29.** Regulations 26 to 28 do not restrict the ability of the Financial Conduct Authority or the Gambling Commission to conduct a review of a decision, at the request of a person liable to pay the levy.

Appealable decisions

30.—(1) A person may appeal to the tribunal against a decision of the Gambling Commission or the HMRC Commissioners in respect of any of the following matters—

- (a) that a person is a person liable to pay the levy;
- (b) the amount of levy charged for a financial year;
- (c) an assessment of amount of levy due under regulation 11A, 14A or 14B;
- (d) whether or not the appropriate collection authority must repay an amount to a person under regulation 18;
- (e) the amount that the appropriate collection authority must repay to a person under regulation 18;
- (f) whether or not a person is liable to a penalty under regulation 20;
- (g) the amount of a penalty payable under regulation 21.

(2) An appeal must be made to the tribunal by the date which is—

- (a) 30 days after the date the person making the appeal is notified by the Gambling Commission or the HMRC Commissioners of the appealable decision, or
- (b) where the Gambling Commission agrees, or the HMRC Commissioners agree, to review a decision, 30 days after the date on which the person making the appeal is notified of the conclusion of the review.

(3) An appeal may be made after the end of any period specified in paragraph (2) if the tribunal gives permission to do so.

Amounts of levy due must be paid before appeal except in cases of hardship

31.—(1) An appeal relating to a decision that an amount of levy is due from a person may not be considered by the tribunal unless the amount which the Gambling Commission has, or the HMRC Commissioners have, determined to be due has been paid or deposited with the Gambling Commission or the HMRC Commissioners.

(2) But sub-paragraph (1) does not apply if—

- (a) the Gambling Commission is or the HMRC Commissioners are satisfied or, if the Gambling Commission is not or the HMRC Commissioners are not satisfied but the tribunal has decided, on the application of the appellant, that the requirement to pay or deposit the amount would cause the appellant to suffer hardship, and
- (b) the appellant has paid or deposited such other amount (if any) by way of security as the Gambling Commission or the HMRC Commissioners or, as the case may be, the tribunal considers appropriate.

Settling of appeals by agreement

32.—(1) An appropriate collection authority may settle an appeal by way of an agreement in writing (“a settlement agreement”) between the appellant and the appropriate collection authority that is—

- (a) entered into before the appeal is determined, and
- (b) to the effect that the decision appealed against should be upheld without variation, varied in a particular manner, discharged or cancelled.

(2) Where a settlement agreement is entered into in relation to an appeal, the consequences are to be the same (for all purposes) as if, at the time the agreement was

entered into, the tribunal had decided the appeal and had upheld the decision without variation, varied it in that manner, discharged it or cancelled it, as the case may be.

(3) Paragraph (2) does not apply if, within 30 days beginning with the date on which the settlement agreement was entered into, the appellant gives notice in writing to the appropriate collection authority that they wish to withdraw from the agreement.

(4) Where an appeal has been made and—

- (a) the appellant notifies the appropriate collection authority, orally or in writing, that the appellant does not wish to proceed with the appeal, and
- (b) the appropriate collection authority does not, within 30 days after that notification, give the appellant notice in writing indicating that it is unwilling that the appeal should be withdrawn,

paragraphs (1) to (3) have effect as if, at the date of the appellant's notification, the appellant and the appropriate collection authority had agreed that the decision under appeal should be upheld without variation.

Payment of levy or penalty where appeal has been determined

33. On the determination of an appeal under regulation 30—

- (a) any levy or penalty overpaid must be repaid;
- (b) any levy or penalty appropriately charged but not yet paid, must be paid,

by the date which is 30 days after the date the appeal is determined.

Payment of levy or penalty where there is a further appeal

34.—(1) Where the appellant makes a further appeal, the levy or penalty is to be payable or repayable in accordance with the determination of the tribunal, even though the further appeal is pending.

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

- (a) if too much levy or penalty has been paid, the amount overpaid must be refunded, with any interest allowed by the order or judgment, and
- (a) if too little levy or penalty has been charged, the amount not yet paid becomes due and payable.”.