
EXPLANATORY NOTE

(This note is not part of the Order)

This Order comes into force on 1st April 2009. It abolishes the Special Commissioners for the special purposes of the Income Tax Acts, the VAT and Duties Tribunal, the tribunal established under section 706 of the Income and Corporation Taxes Act 1988 (c. 1) and the tribunal established under section 704 of the Income Tax Act 2007 (c. 3), transfers their functions to the new tribunal system established under section 3 of the Tribunals, Courts and Enforcement Act 2007 (c. 15), and makes consequential changes including a large number of amendments to references to existing tribunals.

This Order provides for a review of appealable decisions made in the following regimes: income tax, corporation tax, capital gains tax, PAYE, National Insurance Contributions, statutory payments, child trust fund (tax appeals), student loans, inheritance tax, petroleum revenue tax, certain stamp duty penalties, stamp duty reserve tax, stamp duty land tax, VAT, customs duties, excise duties, insurance premium tax, landfill tax, aggregates levy, climate change levy and decisions associated with money laundering provisions.

Article 1 provides for citation and commencement.

Article 2 defines the existing tribunals to which the Order applies.

Article 3 and Schedules 1 and 2 provide for numerous amendments to existing primary and secondary legislation. The amendments transfer the functions of the existing tribunals, provide for a new optional review procedure before a matter is considered by a tribunal and make consequential changes. Schedule 1 relates to primary legislation and Schedule 2 relates to secondary legislation.

To a great extent the transfer is effected by the replacement of references to the existing tribunals with references to the tribunal to which the functions are being transferred. Schedules 1 and 2 delete provisions relating to the existing tribunals where the effects of those provisions are or will be provided for in the Tribunals, Courts and Enforcement Act 2007 (“the 2007 Act”) or in Tribunal Procedure Rules made under that Act.

The new review provisions in Schedules 1 and 2 fall into three main categories.

First, amendments to the direct tax procedures have been made to the Taxes Management Act 1970 (c. 9). The provision for reviews is set out in new sections 49A to 49H of that Act. This model is also followed for the review provisions in other direct taxes such as petroleum revenue tax and stamp duty land tax.

Second, amendments to Part 1 of the Finance Act 1994 (c. 9) provide for an optional review of customs and excise decisions rather than the present mandatory review for most of these decisions. The present arrangements will remain for restoration decisions (under section 152(b) of the Customs and Excise Management Act 1979 (c. 2)).

Third, the amendments to the Value Added Tax Act 1994 (c. 23) include new review provisions for VAT. This model has also been applied to other indirect taxes and in relation to decisions associated with money laundering provisions.

Article 4 abolishes the existing tribunals defined in article 2 with the exception of the Commissioners for the general purposes of the income tax. The abolition of the General Commissioners is provided for by the 2007 Act and the Tribunals Courts and Enforcement Act 2007 (Commencement No. 6 and Transitional Provisions) Order 2008 (S.I. 2008/2696) from 1st April 2009.

Status: Point in time view as at 01/04/2009.

Changes to legislation: There are currently no known outstanding effects for the The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009. (See end of Document for details)

Article 5 provides for the transfer of members of existing tribunals to the new tribunals (apart from the Commissioners for the general purposes of the income tax).

Article 6 and Schedule 3 make transitional and saving provisions for the treatment of cases which would previously have been dealt with by the existing tribunals from which the functions are transferred following the coming into force of this Order.

Any time limits which have already started will continue to run and all appeals made after 1st April 2009 will be to the new tribunals. Cases remitted by a court on or after 1st April 2009 will be remitted to the new tribunal.

Paragraph 13 of Schedule 3 is a general saving provision that references in any enactment (other than in Schedules 1 and 2 to this Order) to an existing tribunal or its members are to be taken as a reference to the tribunal.

Full Impact Assessments of the effect that this instrument will have on the costs of business and the voluntary sector are available at <http://www.hmrc.gov.uk/ria/index.htm> and at <http://www.financeandtaxtribunals.gov.uk/taxAppealsModernisation.htm> and are annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website.

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