STATUTORY INSTRUMENTS

2018 No. 41

SOFT DRINKS INDUSTRY LEVY

The Soft Drinks Industry Levy Regulations 2018

Made - - - -	*15th January 2018*
Laid before the House of Commons - - - -	*17th January 2018*
Coming into force - -	*6th April 2018*

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(**1**).

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;

(**1**) 2017 c. 10.

"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(**2**); and

(b) "listed EU instrument" means—

(i) Council Directive 98/83/EC on the quality of water intended for human consumption(**3**);

(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(**4**);

(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(**5**);

(iv) Regulation (EC) No 1332/2008 of the European Parliament and of the Council on food enzymes(**6**); and

(v) Regulation (EC) No 1333/2008 of the European Parliament and of the Council on food additives(**7**).

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;

(**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.