Finance Bill: alcohol duty

Indirect Tax



22 June 2023

The CIOT prepared a briefing on Finance Bill 2022-23 raising technical points around the inclusion of an alcohol duty rate applying to flavoured beers.

Budget 2020 announced a review of alcohol duty, following the UK's decision to exit from the EU, with the aims of reform and simplification. In October 2020, a call for evidence was published and there were subsequent consultations following Budget 2021, and again in September 2022. Throughout the years of consultation, HMRC also engaged directly with stakeholders.

As a result of the review and consultations, the Finance Bill included new legislation for alcohol duty in clauses 44-119 and Schedules 6-13. The categories of alcoholic product – i.e. spirits, beer, cider, wine and 'other fermented products' – are defined in Schedule 6. The CIOT's briefing (see tinyurl.com/4y32ujs6) raises questions about the inclusion of paragraph 4(3)(b) to Schedule 6:

> *(3) A beer-based beverage is 'qualifying' if:*
>
> *(b) it is of an alcoholic strength not exceeding 5.5%.*

This alcohol strength is different to the band for beer more generally, which is set at 3.5% to 8.5% abv, with rates set out in Table 2 of Schedule 7. While ‘not exceeding 5.5%’ is the current legislative position for flavoured beers set out in The Alcoholic Liquor Duties (Beer-based Beverages) Order 1994, a CJEU judgment in 2018 (*Kompania Piwowarska SA* (Case C-30/17)) ruled that an EU Directive which predated that Order should be interpreted as saying that flavoured beers should be treated as beers for the purposes of excise duty.

In our briefing, we suggested that the distinction now being drawn was perhaps unintentional. The UK can, of course, now legislate to diverge from EU law but we do not believe this is the intention here. We said that if the government’s intention is to preserve the existing position, then beers and flavoured beers should be treated the same, and we said that the wording of Schedule 6 needs amending.

We noted that the aims of the review of alcohol duty included reform and simplification, and the inclusion of an additional duty rate specifically for flavoured beers over a certain strength appears to increase the complexity and administrative burden for producers and imported of affected products.

Our briefing can be read at: www.tax.org.uk/ref1141.

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