1. Introduction

1.1 Scope of this guidance

Our books of guidance are the main reference material for people in the Department. All HM Revenue & Customs formal procedures and work systems are outlined in these books which give managers and staff the Department's rules and guidelines and general advice on interpreting them. The guidance is aimed at HM Revenue & Customs staff and should not be relied upon by businesses in calculating their taxes and duties.

This guidance offers assistance to operational staff on how to deal with excise assessments, including help with their making, notification, amendment and withdrawal. It also explains how to deal with any overdeclaration of excise duty found during an audit. It should be read in conjunction with Notice 208 Excise assessments.

The general principles in this guidance apply equally to Air Passenger Duty, but see X-47 Air passenger duty for certain provisions which are specific to that regime (eg use of assessment form APD 641).

This guidance does not deal with any of the following areas:

For guidance on...	**See...**
Repayments of overpaid excise duty, and statutory interest	X-51A Part 1 Repayment of overpaid excise duty and Part 2 Statutory interest
Excise civil penalties	X-51B Excise civil penalties
The treatment of offences involving dishonesty	X-52 Civil treatment of evasion and X-53 Offences
Landfill tax, climate change levy and aggregates levy assessments	X-55 Landfill tax, X-36 Climate change levy and S10-3 Excise regime specific guidance (there is also a civil penalties / assessments aide-memoire on the Aggregates Levy Unit of Expertise website)

1.2 Release of information: Freedom of Information Act 2000

No exemptions under the Freedom of Information Act apply and all information in this guidance may be released on request.

1.3 Background

The power to assess excise duty was introduced under section 12 of the Finance Act 1994 and replaced the power to estimate duty. Subsequent Finance Acts have introduced additional assessment powers, either to replace existing powers of recovery or to provide the power to assess in particular circumstances, for example where excise duty relief has been wrongly given. All are explained in the sections indicated in paragraph 1.4.

1.4 Law and regulations

The main legislation relating to excise assessments is in the Finance Act 1994 sections 12, 12A and 12B. Changes introduced by Finance Acts 1997, 1998, 2001 and 2002 have significantly revised this legislation.

Other powers of assessment are:

Act...	**Section…**	**For guidance see...**
Customs and Excise Management Act 1979	• 61, 94, 96 and 167	• section 6
Hydrocarbon Oil Duties Act 1979	• 10, 13, 13AB, 14, 20AAB, 23 and 24	• section 7
Alcoholic Liquor Duties Act 1979	• 8, 10, 11 and 36G	• section 8
Tobacco Products Duty Act 1979	• 8	• section 8
Betting and Gaming Duties Act 1981	• schedule 4A	• section 8

1.5 The role of Errors and Assessments team

The Errors and Assessments team within Policy Group's Compliance Framework division, is responsible for tax and duty assessment and error correction policies.

The team provides policy advice on:

- assessment powers including best judgement and time limits;
- assessing liable persons; and
- provisions and processes to establish debts as recoverable.

The team does not deal with:

- liability;
- duty points;
- use of guarantees;
- interest;
- penalties;
- debt management; or
- maintenance of operational systems.

1.6 Risks and controls

It is important that any person liable to pay duty accounts for the correct amount at the correct time. The aim of the assessment system is to provide an effective mechanism for officers to establish and correct liability in circumstances where, eg no return is made, or duty is not declared or is underdeclared.

As with any system it is important that assurance measures are in place to maintain the credibility, integrity and effectiveness of the assessment system. Local controls should ensure that assessments are made, notified, processed and accounted for promptly and accurately. Requests for reconsideration or review must be dealt with in accordance with Charter standards and by an appropriate, independent person.

2. Assessments to excise duty

2.1 Powers to assess excise duty

Finance Act 1994 section 12 contains two powers to assess excise duty.

The first of those powers, section 12(1), is explained in this section. It is the main excise assessment provision and is used when there is a failure to make a return or duty is underdeclared or has otherwise become due. Two minor provisions aside, it is the only provision that allows an assessment to be made to best judgement (see section 15).

The second power, section 12(1A), is explained in section 3. Paragraph 2.6 explains when to use each power.

2.2 The "default" power

Section 12(1) of the Finance Act 1994 provides the power to assess for excise duty due where there has been a default.

12 Assessments to excise duty

(1) Subject to subsection (4) below, where it appears to the Commissioners-

(a) that any person is a person from whom any amount has become due in respect of any duty of excise; and

(b) that there has been a default falling within subsection (2) below,

the Commissioners may assess the amount of duty due from that person to the best of their judgement and notify that amount to that person or his representative.

Provided that an amount of excise duty has become due from a person, and there has been a default, you may assess the amount of duty to the best of your judgement (see section 15) and notify it to that person or his representative.

2.3 The defaults

The circumstances when you may assess the amount of duty due are in section 12(2) of the Finance Act 1994. An assessment may be made and notified when:

- a person has failed to make the returns required;
- it appears such returns are incomplete or inaccurate;
- a person has failed to keep, preserve or produce any accounts, books, records or other documents;
- it appears that such accounts, books, records or other documents are incomplete or inaccurate;

- there are specified failures under Schedule 1 or Schedule 3 of the Betting and Gaming Duties Act 1981 or Schedule 1 of the Finance Act 1997; or
- there is unreasonable delay in the performance of any obligation, the failure to perform which would be a default under any of the above.

2.4 Extended definition of default

Section 12(2A) of the Finance Act 1994, introduced on 28 September 2001, extends the definition of default in section 12(2).

> (2A) In subsection (2)(a) and (b) above "enactment" includes directly applicable Community provision.

Before this new provision was introduced, the defaults in section 12(2)(a) and (b) (summarised in the first four bullet points of paragraph 2.3) related only to documentary requirements imposed under **UK legislation**, eg the completion and submission of Form W5.

For practical purposes, the extended definition means that where an **EC Council or Commission Regulation** requires a person to make, keep or preserve a document, failure to do so is a default. Likewise, any omission or inaccuracy in such a document is a default.

Consequently, in a case where there is such a default and excise duty has become due from a person, you may assess the amount of duty to the best of your judgement and notify it to that person or his representative (under section 12(1)).

See section 28 for examples of where the extended definition applies.

2.5 Must the person we assess be the person responsible for the default?

No. The person we assess may be someone other than the person responsible for the default.

Section 12(1) of the Finance Act 1994 does not specify that the default must be that of the person from whom the duty has become due. It simply requires that "there has been a default". It follows that a person may be assessed under section 12(1) even if they were not responsible for the default that gives rise to the assessment.

There must, however, be a link between the duty liability and the default.

2.5.1 In what circumstances might we assess someone other than the person responsible for the default?

There are circumstances where the person with primary liability to pay the duty (who we may therefore assess) is not the person responsible for the default. This type of situation is particularly prevalent in those excise regimes where guarantees are required.

A simple example is where a consignor warehousekeeper fails to produce a certificate of receipt (normally copy 3 of the Accompanying Administrative Document (AAD)) for an intra-EU movement of excise goods, which is a default, but another person has arranged the guarantee and is liable to pay the duty. The liability arises under regulation 7(1) of the Excise Duty Points (Duty Suspended Movements of Excise Goods) Regulations 2001 (DSMEG), assuming there has been an irregularity and a duty point has been created under those regulations.

The introduction of DSMEG, and the Excise Goods (Accompanying Documents) Regulations 2002, has increased substantially the number of circumstances where the Commissioners may wish to make and notify an assessment under section 12(1) to one person (the person who arranged the guarantee and is liable to pay the duty) when another person was responsible for the default.

2.5.2 Assessments in respect of intra-EU movements – further guidance

You will find detailed guidance on the holding and movement (warehousing) regime in S10-3 Excise Regime Specific Guidance.

The section on the civil penalty regime for excise warehouse returns provides links to guidance on making and notifying assessments in respect of undischarged AADs and on the effects of the December 2002 ECJ judgement in the case of **Distillerie Fratelli Cipriani C-395/00**.

You should read the guidance on this judgement if you are considering making and notifying an assessment to a person who was not in a position to know that the duty suspended movement in question had not been properly discharged. It explains that you should first notify them of the irregularity and give them a month to provide alternative evidence of discharge.

2.6 Finance Act 1994 section 12(1) or section 12(1A): which power to use

Section 3 describes the alternative assessment power in section 12(1A) of the Finance Act 1994 - the “ascertained” power.

The two powers are not mutually exclusive. Both apply when an amount of excise duty has become due from a person. However, in all cases where a default is identified (which will be the vast majority of cases), the section 12(1) power should be used. This means that the assessment may be made to best judgement.

The section 12(1A) power should only be used in the few limited circumstances where there has not been a default (see paragraph 3.3 regarding when to use s12(1A)).

3. Assessments to excise duty – alternative power

3.1 The "ascertained" power

Section 12(1A) of the Finance Act 1994 (which was introduced with effect from 1 October 1998) provides the power to assess for excise duty due where the amount due can be "ascertained".

> (1A) Subject to subsection (4) below, where it appears to the Commissioners-
>
> (a) that any person is a person from whom any amount has become due in respect of any duty of excise; and
>
> (b) that the amount due can be ascertained by the Commissioners,
>
> the Commissioners may assess the amount of duty due from that person and notify that amount to that person or his representative.

Provided that an amount of excise duty has become due from a person, and the amount due can be ascertained, you may assess the amount of duty and notify it to that person or his representative.

3.2 What is meant by "ascertained"?

The term "ascertained" is not defined in law. We see the term as meaning "identified", "determined", "calculated" or "found out". This assessment power should only be used where it is possible to identify an exact amount of duty, as there is no reference to "best judgement" in section 12(1A).

3.3 When to use the assessment power in Finance Act 1994 section 12(1A)

The section 12(1A) assessment power should only be used in the few limited circumstances where there has not been a default and section 12(1) may not be used (see paragraph 2.6). There will not have been a default if, for example, there is no statutory requirement for a person to make a declaration by a given date.

In brief, the circumstances where this power may be used will normally have the following characteristics:

- an excise duty point has been created;
- the person liable to pay the duty can be identified;
- an exact amount of excise duty is due and can be ascertained; but
- there has been no default.

4. Liability issues, including joint and several liability

4.1 General

Excise assessments often involve complex liability issues. Before making and notifying an assessment to excise duty you must ensure that an amount of duty has become due (eg for goods, when a duty point has been created) and that you have identified the person or persons liable to pay.

4.2 Primary and secondary liability

Provisions in various Acts and regulations specify the person or persons liable to pay when excise duty becomes due. Depending on the circumstances, the liability could be:

- primary; and in certain cases also
- secondary (joint and several)

4.3 Primary liability

In circumstances where an amount of duty has become due, an assessment should be made and notified to the person with primary liability to pay the duty.

This person should be relatively easy to identify and in most cases will be registered with the Department (or approved, authorised etc, as appropriate).

They may also be the person required to keep records and make returns and so will be the person whose 'default' under section 12(2) of the Finance Act 1994 will provide the legal basis for the assessment.

4.4 Cases where there is more than one person with primary liability

It is possible to have more than one "person" with primary liability to pay the duty. For example, in the Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992:

Regulation 5 Person liable to pay the duty

(1) The person liable to pay the duty in the case of an importation of excise goods from another Member State shall be the importer of the excise goods.

This identifies the importer as the person liable to pay the duty, but in paragraph (9) of the regulation the definition of importer is extended to include other persons:

(9) In this regulation "importer of the excise goods" includes any owner of those excise goods or any person beneficially interested in those excise goods.

In such cases, only one assessment should be made, but it should be notified to every person with primary liability – see paragraph 19.1.

4.5 Secondary (joint and several) liability

The following is a definition of joint and several liability provided by Solicitor's Office:

"Where liability is **several**, it is possible to proceed against each person individually and recover from each person individually.

Where there is a **joint** liability, proceedings must be taken against persons jointly, but each person is jointly liable for any debt such that where one person has no funds the whole of the amount of any debt can be recovered from the other person or persons who are jointly liable."

What this means, if a number of persons are jointly **and** severally liable, is that we can take civil recovery action against them all at the same time, or one at a time.

In excise legislation, it is often the case that one person is defined as having a primary liability to pay, and other persons are identified as having a secondary, joint and several liability.

Those with a secondary liability will be liable to pay **with** the first named person. It is therefore clear that, although their liability is "several" as well as joint, that liability is dependent on the first named person being liable.

Excise Duty Points (Duty Suspended Movements of Excise Goods) Regulations 2001:

7 Payment

(1) … [specifies the person with primary liability] …

(2) Any other person who causes or has caused the occurrence of an excise duty point as prescribed by regulation 3 or 4 above, shall be jointly and severally liable to pay the duty with the person specified in paragraph (1) above.

In such cases, it is important to assess the person with primary liability in order to establish the connection between that person and the person(s) with secondary liability.

The person(s) with secondary liability should not be assessed. Instead, they should be notified of their liability by letter – see section 20.

4.6 Other cases involving joint and several liability

Other provisions identify a number of persons as having a joint and several liability, but do not separate them into those with primary and those with secondary liability. An example is in the Warehousekeepers and Owners of Warehoused Goods Regulations 1999:

21 Excise duty points – ownership of goods

….

(3) The persons jointly and severally liable to pay the duty at the excise duty point shall be-

(a) the authorized warehousekeeper for the excise warehouse in which the goods were kept,

(b) the owner of the goods immediately before the excise duty point,

(c) if different, the owner of the goods immediately after the excise duty point, and

(d) the duty representative of the owner of the goods immediately before the excise duty point.

In this case, only one assessment should be made, but it should be notified to **all** of the persons listed at (a) to (d) - assuming all are relevant to the case in question (for example, there may not be a different owner after the duty point). See paragraph 19.1.

In the case of General Betting Duty, the bookmaker is liable to pay the duty due on bets made with him in an accounting period. The relevant section of the Betting and Gaming Duties Act 1981 goes on to say:

5B Liability to pay

…

(3) But general betting duty which is due to be paid by a bookmaker in respect of bets may be recovered from the following persons as if they and the bookmaker were jointly and severally liable to pay the duty -

(a) the holder of a bookmaker's permit for the business in the course of which the bets were made;

(b) a person responsible for the management of that business;

(c) where the bookmaker is a company, a director.

Note the difference in terminology – "the duty **may be recovered** from …", rather than "the persons jointly and severally liable to pay …".

This may indicate a different approach where recovery is concerned, but has no bearing on the assessment, which should be made and notified to the person with primary liability.

Policy on recovery in any case is that the person with primary liability should be pursued first. For more on this, see the guidance specific to the particular regime (in this case, X-21 General betting duty) and the more general guidance in the section on who is liable to pay the debt (excise duties) in S8-25 Civil recovery.

5. Assessments in particular excise regimes

5.1 Assessments under provisions in the Customs and Excise Management Act 1979 (CEMA) or other regime specific legislation

Certain parts of:

- CEMA;
- the Hydrocarbon Oil Duties Act 1979;
- the Alcoholic Liquor Duties Act 1979; and
- the Tobacco Products Duty Act 1979

were amended by Finance Acts 1997 and 1998 to provide assessment powers where we already had powers to recover amounts representing excise duty.

This was done primarily to provide traders with access to the review and appeals system.

Prior to the changes, the assessment powers that existed could not be used to notify decisions to recover amounts due in certain circumstances. Instead, such decisions were notified by means of a written demand and could only be formally challenged by seeking a judicial review.

5.2 What is different about these assessment powers?

The circumstances in which an excise assessment may be made effectively fall into two categories:

- cases where an amount of excise duty should have been paid at some time before the date of the assessment but no payment was made; and
- cases where it is not possible to point to there having been any liability to make payment before the assessment was made (because, eg, there is no requirement to make a declaration or return).

Assessments to excise duty made under Finance Act 1994 section 12 fall into the first category.

Assessments made under provisions in CEMA or other regime specific legislation fall into the second category. Typically, they 'deem' the amount assessed to be excise duty, by providing that the Commissioners "may assess **as being excise duty due** from the person concerned an amount equal to the duty that would have been chargeable on …". They provide not only the power to assess but also determine the liability in each case.

Best judgement does not apply in such cases. You should be able to ascertain the exact amount due.

6. Assessments under provisions in CEMA

6.1 Assessments for deficiencies in warehoused goods

Section 94(3)(b) of CEMA provides the power to assess when goods are found to be missing or deficient before they are lawfully removed from warehouse.

It is used to assess for losses and deficiencies of excise goods in warehouse where the warehousekeeper cannot show that the loss or deficiency was accidental or due to natural causes.

The provision may also be used in cases where goods are unlawfully removed from warehouse. An unlawful removal occurs when:

- the entry that is made is deliberately false in order to perpetrate a fraud; or
- there is a failure to comply with regulatory requirements.

An unlawful removal will not necessarily constitute a deliberate attempt to defraud. Duty suspended excise goods removed from the warehouse without the appropriate removal documentation would constitute an unlawful removal contrary to the Excise Warehousing (Etc) Regulations 1988. The most likely scenario would be where, by way of a genuine mistake, the wrong goods are picked and removed. If errors of this nature occur frequently then consideration should be given to the issue of a civil penalty in addition to a revenue assessment.

For further information on what constitutes an unlawful removal in a smuggling or diversion case, and the factors to consider in such cases, see the section on outward diversion cases in Excise diversions and smuggling: assessing for duty and VAT.

6.1.1 Who to assess

When assessing under section 94(3)(b), a choice has to be made whether to assess the warehousekeeper **or** the proprietor of the goods. (Only one may be assessed.)

In cases where there is a simple loss or deficiency, the warehousekeeper should be assessed as they have failed to ensure the safe-keeping of the goods.

For unlawful removals, the warehousekeeper should be assessed where it is clear that they did not comply with all their legal responsibilities, eg by not ensuring that a guarantee is in place, that the movement documentation is correctly completed or that the consignee is approved to receive the goods.

The owner (as proprietor) should be assessed in cases where it is clear that they directed the movement, hired the transporter and were likely to be aware that the goods did not reach their stated destination.

Given the legal responsibilities of warehousekeepers, we would expect proprietors to be assessed only in exceptional circumstances. In cases of doubt, seek the advice of the Errors and Assessments team.

6.2 Goods lawfully removed from warehouse

CEMA section 94 deals with deficiencies in warehoused goods. **Section 95** applies section 94 to the situation where goods "have been lawfully permitted to be taken from a warehouse without payment of duty for removal to another warehouse or to some other place".

This provides the power to assess for losses or deficiencies in **UK** movements - including removals for export to third countries - where the loss or deficiency is not accidental or due to natural causes.

Section 95 also modifies section 94 so that only the **proprietor** may be assessed in such cases.

(Provisions in other legislation deal with irregularities occurring during intra-EU movements. See the TA/section on the Excise Duty Points (Duty Suspended Movements of Excise Goods) Regulations 2001 in X-42 Excise goods: holding and movement. Finance Act 1994 section 12 provides the power to assess in such cases.)

6.3 Other assessment provisions in CEMA

CEMA also provides the power to assess in situations where:

- there are stores on a ship or aircraft which departs the UK but returns having failed to reach its (overseas) destination - **section 61(7A)**;
- there are deficiencies in certain goods moved by pipe-line - **section 96(2)(b)**;
- duty has been underpaid, or the Commissioners have overpaid drawback, rebate etc as a result of an untrue declaration - **section 167(5)**.

7. Assessments under provisions in the Hydrocarbon Oil Duties Act 1979 (HODA)

7.1 Assessments relating to oils

HODA contains various powers of assessment. They apply where there are contraventions of specific provisions in the Act or in regulations made under the Act.

This section explains how each of these assessment powers applies and provides links to relevant guidance. General guidance on oils is in X-27 Mineral Oils and Notice 179 Mineral (hydrocarbon) oils: duty and VAT: warehousing and related procedures.

7.2 Tied oils

Notice 184A Mineral (hydrocarbon) oil put to certain use: excise duty relief explains how relief may be obtained from excise duty on oil put to certain industrial uses. This is commonly known as the Tied Oils Scheme. Section 9 of HODA refers.

Section 10(3) provides the power to assess in situations where:

- oil is put to a use that does not qualify for relief under section 9 without prior payment of the duty (for example, no relief is allowed on oil used as heating fuel); or
- a person acquires or takes into any vehicle, appliance or storage tank oil delivered under the terms of section 9 in order to put the oil to ineligible use.

The amount assessed is an amount equal to the excise duty on like oil.

For further guidance see X-27 Mineral Oils, S10-3 Excise Regime Specific Guidance: Oil Duty Assurance and S10-3 Oils Strategy Assurance Guidance.

7.3 Rebated heavy oil used as fuel for, or taken into, a road vehicle

Notice 75 Fuel for road vehicles explains that rebated heavy oil, eg kerosene, may not be used as fuel in a road vehicle unless an amount equal to the rebate has been paid to the Commissioners (which may only be done in very limited circumstances). Section 12(2) of HODA refers.

Section 13(1A) provides the power to assess in situations where a person uses oil, or is liable for oil being taken into a road vehicle, in contravention of section 12(2).

The amount assessed is an amount equal to the rebate on like oil allowed at the rate in force at the time of the contravention.

For further guidance see X-32 Road fuel testing unit guidelines.

7.3.1 Can a supplier or launderer be assessed when rebated fuel is taken into a road vehicle?

In a case where rebated fuel is taken into a road vehicle, the person liable is the person who has charge of the vehicle at the time or is its owner (or is a person entitled to possession of the vehicle at the time) – see HODA section 13(7). This person may be assessed under section 13(1A).

This provision cannot be used to assess the supplier of the fuel, or any person who laundered the fuel by removing the marker (unless it is shown that they are also the person liable for taking the fuel into the vehicle, as described above). However, such persons may be liable to penalty and offence action under other provisions in section 13.

Assessment action is possible in the situation where a supplier, eg a filling station, deliberately produces and supplies a mixture of rebated and non-rebated oil. See paragraph 7.6.

S10-3 Oils Strategy Assurance Guidance contains detailed guidance on post-RFTU detection assessment visits, and assessments where there is misuse, mixing or laundering of rebated oil.

7.4 Misuse of kerosene

(Fully) rebated kerosene may not be used as fuel in an excepted vehicle or stationary engine unless an amount equal to the (partial) rebate on gas oil - otherwise known as red diesel – has been paid. Sections 13AA and 13AB of HODA refer. (Excepted vehicles are listed in Schedule 1 of the Act and include, eg road rollers and specified agricultural vehicles.)

Section 13AB(1)(a) provides the power to assess in situations where a person uses kerosene as fuel in an excepted vehicle or stationary engine in contravention of section 13AA(2).

Section 13AB(2)(a) provides the power to assess in situations where a person is liable for kerosene being taken into the fuel supply of an excepted vehicle or stationary engine in contravention of section 13AA(2).

The amount assessed is an amount equal to the rebate on an equivalent amount of gas oil.

For further guidance see X-32 Road fuel testing unit guidelines.

7.5 Light oil used as furnace fuel

Notice 184B Rebate of duty on light oil used as furnace fuel explains how businesses using light oil as furnace fuel may apply to be approved to receive the oil at a rebated rate. Section 14 of HODA refers. Section 14(2) states that the oil may not be put to a use other than burning as furnace fuel.

Section 14(4) provides the power to assess in situations where a person:

- uses or acquires oil in contravention of section 14(2); or
- is liable for oil being taken into a vehicle, appliance or storage tank in contravention of section 14(2).

The amount assessed is the amount of the rebate allowed.

For further guidance see the above notice.

7.6 Mixing of rebated oils

HODA section 20AAA deals with the unapproved mixing of oils of different duty rates and resultant liability to pay duty. Unapproved mixing includes, for example, mixing fully rebated heavy oil (kerosene) with unrebated heavy oil (DERV). Depending on the circumstances, either the **producer** or the **supplier** of the mixture will be liable to pay duty.

Where such mixing has occurred, provisions relating to the notification and payment of duty are in section 20AAB.

Section 20AAB(4) provides the power to assess the amount of duty charged under section 20AAA from either the producer or the supplier of the mixture.

Unlike other assessments under HODA, an assessment under section 20AAB(4) may be made to best judgement. It is also treated as if it were an assessment under Finance Act 1994 section 12(1) by virtue of section 20AAB(5).

The power to assess does not apply when the person liable to pay the duty has been given a direction requiring them to make returns, account for and pay the duty.

For further guidance see X-27 Mineral Oils, X-32 Road fuel testing unit guidelines and S10-3 Oils Strategy Assurance Guidance.

7.7 Road fuel gas

Road fuel gas is any gas used for fuel in road vehicles which are specifically built or converted to run on gas. The two main types are Liquefied Petroleum Gas (LGP) and Compressed Natural Gas (CNG).

Notice 76 Excise duty on gas for use as fuel in road vehicles explains that gas used as fuel in a road vehicle must be duty-paid. Section 8 of HODA refers.

Section 23(1B) provides the power to assess in situations where a person uses gas as fuel in, or takes gas as fuel into, a road vehicle when the duty chargeable under section 8 has not been paid.

The amount assessed is the amount of duty due under section 8.

For further guidance see X-29 Gas: road fuel.

7.8 Duty-free and rebated oil: failure to comply with requirements in regulations

Under section 24 of HODA, the Commissioners have made various regulations relating to the control of duty-free and rebated oil.

Section 24(4A) provides the power to assess in situations where a rebate is allowed on any oil and a person contravenes or fails to comply with any requirement (in regulations) that is a condition of allowing the rebate. For example, an assessment may be made when a person fails to comply with a requirement to add a prescribed marker to the oil.

Section 24(4B) provides the power to assess in situations where oil is delivered without payment of duty and a person contravenes or fails to comply with any requirement (in regulations) that is a condition of allowing the oil to be delivered without payment of duty.

Section 24(4C) modifies the 24(4A) assessment power so that it includes the power to assess and notify a lesser amount if oil is undermarked.

For further guidance see X-27 Mineral Oils.

8. Assessments under provisions in other acts

8.1 Assessments relating to spirits

The Alcoholic Liquor Duties Act 1979 (ALDA) provides the power to assess in situations where:

- a person who is authorised to use spirits for medical or scientific purposes fails to use them as proposed - **section 8(4)**;
- a person who is authorised to use spirits in art or manufacture fails to use them as proposed - **section 10(4)**; or
- relief from duty is allowed on imported goods not for human consumption containing spirits, but the spirits are not used for an approved purpose - **section 11(3)**.

For further guidance, see the section on assessments and penalties in X-3 Duty free spirits.

8.2 Assessments relating to small brewery beer

Section 36G of ALDA (inserted by virtue of FA 2002, section 4, Schedule 1 paragraph 2) allows assessment where:

- it appears at the excise duty point that beer was small brewery beer for the purposes of section 36(1AA) but it turns out that the beer was not small brewery beer; or
- the rate of duty charged on small brewery beer at the excise duty point appeared to be the correct rate but turns out to have been lower than the correct rate,

because, for example, circumstances were not as they appeared at that point or they subsequently changed.

In such cases, we may assess for the difference between the actual amount of duty charged on the beer by section 36 of ALDA and the lower amount which appeared at the duty point to be the amount charged.

For further guidance, see X-8 Beer.

8.3 Assessments relating to tobacco products

Under **section 8(2)** of the Tobacco Products Duty Act 1979 an assessment may be made and notified in respect of the tobacco products duty on:

- tobacco products that the manufacturer cannot account for; or

- tobacco products that might reasonably be expected to have been made from materials that the manufacturer cannot account for.

This provision applies in practice to registered tobacco factories and stores, where the manufacturer is required to keep records or make returns of materials, production and removals.

For further guidance on ‘unaccountable losses’, see the section on manufacture in X-20 Tobacco products duty.

8.4 Assessments of amusement machine licence duty (AMLD)

Under the Betting and Gaming Duties Act 1981 **Schedule 4A paragraph 4(2)**, an assessment may be made using best judgement and notified to recover AMLD when a dutiable amusement machine has been provided for play without a proper licence being in force. The procedures for issuing a default notice, plus subsequent default licence and assessment are set out in the section on retrospective licensing in X-24 Amusement machine licence duty.

9. Assessments where relief has been wrongly given

9.1 The power to assess for any relevant excise duty relief

Section 12A of the Finance Act 1994 (which was introduced with effect from 1 June 1997) provides the power to assess for "any relevant excise duty relief" that has been wrongly given.

12A Other assessments relating to excise duty matters

(1) This subsection applies where any relevant excise duty relief other than an excepted relief-

(a) has been given but ought not to have been given, or

(b) would not have been given had the facts been known or been as they later turn out to be.

(2) Where subsection (1) above applies, the Commissioners may assess the amount of the relief given as being excise duty due from the liable person and notify him or his representative accordingly.

Provided that the facts are as described in section 12A(1)(a) or (b), ie that excise duty relief has been wrongly given, section 12A(2) allows you to assess the amount of the relief as though it is excise duty and notify the amount to the liable person or his representative.

9.2 What is "any relevant excise duty relief"?

Section 12B of the Finance Act 1994 contains supplementary provisions to section 12A. Section 12B(1) lists the relevant excise duty reliefs and defines when they have been given and the amount that has been given.

In brief, relevant excise duty relief has been given if:

- an amount of excise duty a person is liable to pay has been remitted, or payment has been waived;
- excise duty has been repaid to a person;
- drawback of excise duty has been paid to a person, or the liability of a person to repay drawback has been waived;
- an allowance of excise duty has been made;
- an amount of rebate has been allowed; or
- other specified circumstances within the Hydrocarbon Oil Duties Act 1979 apply.

The "excepted relief" referred to in section 12A(1) is the repayment of overpaid duty under section 137A of the Customs and Excise Management Act 1979. Guidance on making and notifying assessments to recover such repayments is in section 10.

9.3 Who is the liable person?

Section 12(B)(3) of the Finance Act 1994 defines the liable person for the purposes of an assessment under section 12A. In most cases this will be the person to whom the relief in question was given.

9.4 Assessments for recovery of drawback

As described in paragraph 9.2, drawback wrongly given may be recovered by making and notifying an assessment under section 12A(2) of the Finance Act 1994.

There is another power to recover cancelled drawback. A written demand may be made under regulation 13(2) of the Excise Goods (Drawback) Regulations 1995. This applies where there has been a contravention of any conditions in the Regulations or in section 133 of the Customs and Excise Management Act 1979.

9.4.1 Which power to use?

In most circumstances it would be possible to use either of these two powers. Our policy is that the Finance Act section 12A assessment power should be used in all cases. Please contact the Errors and Assessments team if you identify any case where you consider that use of the demand power is appropriate.

The enabling provision for the demand power, Finance (No 2) Act 1992 section 2, is to be modified, from a day to be appointed, so that it will provide a power of assessment. Further guidance will be issued when this happens.

10. Assessments to recover excess payments by the Commissioners

10.1 Assessments for excessive repayment

X-51A Part 1 Repayment of overpaid excise duty describes the circumstances where a person may make a claim for repayment of overpaid excise duty and explains the reimbursement scheme for refunding consumers in cases where unjust enrichment applies. Finance Act 1997 Schedule 5 paragraph 14 provides the power to assess to recover excess payments by the Commissioners.

10.1.1 Assessments to recover amounts paid by the Commissioners

Paragraph 14(1) allows a best judgement assessment to be made to recover any excess amount paid to a person who has made a claim for:

- repayment of overpaid excise duty under section 137A of the Customs and Excise Management Act 1979; or
- repayment of an amount paid by way of excise duty due to an error by the Commissioners, or a rebate disallowed in error (part I of Schedule 3 to the Finance Act 2001).

This assessment provision also provides for the recovery of excess payments relating to overpayments of Insurance Premium Tax and Landfill Tax.

10.1.2 Assessments for failure to reimburse consumers

Schedule 5 paragraph 14(2) allows a best judgement assessment to be made to recover amounts from a person who fails to reimburse consumers in the manner agreed under any reimbursement arrangements.

10.1.3 Time limits for paragraph 14 assessments

In contrast to other assessments, a two-year time limit applies. See paragraph 13.2.

10.2 Assessments for overpayments of interest

Paragraph 15 of Schedule 5 allows a best judgement assessment to be made to recover any amount paid by way of interest:

- on an overpayment of air passenger duty; or
- in relation to a case involving delay or error by the Commissioners (part II of Schedule 3 to the Finance Act 2001).

10.2.1 Time limits for paragraph 15 assessments

As with assessments under paragraph 14 of Schedule 5, a two-year time limit applies to assessments made under paragraph 15.

10.3 Interest charges and civil penalties

Paragraph 17 of Schedule 5 allows for interest to be charged on the whole amount of any assessment made under paragraph 14 or 15.

In addition to the powers to assess, paragraph 4(1) of Schedule 5 also allows us to issue a civil penalty. A penalty may be issued where there is a contravention or failure to comply with any obligation imposed by regulations made under paragraph 3(4) of the Schedule. See X-51B Excise civil penalties and the sections on the reimbursement scheme in X-51A Part 1 Repayment of overpaid excise duty.

10.4 Supplementary assessments

Where a re-examination of an assessment under Finance Act 1997 Schedule 5 paragraph 14, 15 or 17 indicates that it should have been made for a greater amount, paragraph 18 of the Schedule allows a supplementary assessment to be made. This is provided that the assessment is made under the same paragraph as the original assessment and the time limits applicable to the original assessment have not expired.

11. Assessment time limits

11.1 Time limits for 'making' and 'notification' of excise assessments

Time limits provide certainty for duty payers and ensure that we will not assess for duty once a prescribed interval has elapsed.

The Finance Act 1994 prescribes time limits only for the 'making' of an assessment. It does not prescribe time limits for the processing and notification procedures that follow on from the making of an assessment.

Although it is our policy that notification should follow on quickly, delays in notification can occur from time to time due to localised and administrative difficulties.

11.2 Applying the time limits to the 'notified' date

Problems arise when an assessment is made close to the time limit for assessing. An officer may make an assessment in time but it may not be notified until later. In such cases we must always be able to demonstrate that the assessment was made within the prescribed time limits.

We have increasingly faced challenges in this area, particularly in respect of VAT assessments, and we acknowledge that it is undesirable that our time limit rules should attach to a 'made' date not routinely disclosed to tax and duty payers.

Therefore, for all assessments made on or after 1 March 2001 as a matter of policy we will rely on the date of notification of an assessment as the material date for time limit purposes.

It is consequently essential that assessments are **notified** within the statutory time limits prescribed in the Finance Act for the **making** of assessments.

11.3 Statement of Practice - Notice 915

Notice 915 Assessments and time limits: statement of practice sets out for taxpayers our procedures for making and notifying VAT assessments. The principles set out in the notice also apply generally to excise assessments.

11.4 What are the time limits for excise assessments?

Generally, there are two time limits to consider before making an assessment. They are:

- the three year rule; and
- the one year rule.

These rules are explained in section 12.

Each of the limits determines a date by which the assessment must be **made**. For guidance on when an assessment is 'made', see paragraph 16.2.

There is also a third time limit, the twenty year rule, which applies in cases involving fraud or dishonesty, as described in paragraph 12.4.

11.5 Cases where no time limits are prescribed

Although time limits for making assessments are not prescribed for all circumstances, the time limits in section 12(4) of the Finance Act 1994 (see paragraph 12.1) are treated as applying, as nearly as circumstances allow, in those cases where no time limit is prescribed.

11.6 When was the three-year time limit introduced?

The three-year ‘capping’ provisions that apply to excise duties (the three year rule) came into force when the Finance Act 1997 received Royal Assent on 19 March 1997. Previously it had been possible to assess back for six years.

12. Time limits for assessments to excise duty

12.1 One, three and twenty year rules

The time limits for assessments to excise duty under sections 12(1) and 12(1A) of the Finance Act 1994 are prescribed by section 12(4).

> (4) An assessment of the amount of any duty of excise due from any person shall not be made under this section at any time after whichever is the earlier of the following times, that is to say-
>
> (a) subject to subsection (5) below, the end of the period of three years beginning with the time when his liability to the duty arose; and
>
> (b) the end of the period of one year beginning with the day on which evidence of facts, sufficient in the opinion of the Commissioners to justify the making of the assessment, comes to their knowledge;

These are commonly known as the one and three year rules. A twenty-year rule applies to assessments in cases involving fraud or dishonesty.

12.2 The one year rule

This allows an assessment to be made up to one year after "evidence of facts, sufficient in the opinion of the Commissioners to justify the making of the assessment, comes to their knowledge".

'Sufficient' facts means having the necessary information to ensure the assessment is to 'best judgement'. Detailed guidance is in section 14 'Evidence of facts' and section 15 'Best judgement'.

The one-year rule establishes the time by which the assessment must be made. It applies in conjunction with the three-year rule, which establishes how far back you can assess.

12.3 The three year rule

This rule means you will be in time to assess if the liability to duty arose no more than three years before the day on which you make your assessment. This is provided the assessment is made and notified within one year of evidence of facts (the one year rule above).

Other than in the circumstances set out at paragraph 12.4 (the twenty year rule), three years is the maximum time limit available to the Commissioners for assessments under Finance Act 1994 section 12 and in cases where no time limit is prescribed.

The three-year clock does not stop running between the time you have identified a potential liability and when you have sufficient information to make the assessment. So, it is important to remember that earlier dates may be vulnerable to 'falling off the edge' during enquiry time.

Remember that for assessments made and notified on or after 1 March 2001 we rely on the date of **notification** to evidence the date by which an assessment was **made**, so it is essential that your assessment is both made and notified within the prescribed time limits. See paragraph 11.2.

12.3.1 The three year rule and "bulk" assessments

A "bulk" (or global) assessment is one that covers more than one accounting period. When making and notifying this type of assessment, you should take particular care to ensure that the three-year time limit is not exceeded. This is because the **whole** assessment will be out of time if only part of it, eg the earliest accounting period, would be out of time under the above criteria.

Make a final check at the time the assessment is notified to ensure that the start date for the assessment is not more than three years old.

12.4 The twenty year rule

This time limit extends the three-year rule to twenty years where a person's conduct involves fraud or dishonesty. Note that the conduct in question does not have to be that of the person who is assessed.

(5) Subsection (4) above shall have effect as if the reference in paragraph (a) to three years were a reference to twenty years in the case of any assessment to any amount of duty the assessment or payment of any of which has been postponed or otherwise affected by-

(a) conduct in respect of which any person (whether or not the person assessed)-

(i) has become liable to a penalty under section 8 above, or

(ii) has been convicted of an offence of fraud or dishonesty; or

(b) any conduct in respect of which proceedings for an offence of fraud or dishonesty would have been commenced or continued against any person (whether or not the person assessed), but for their having been compounded under section 152(a) of the Management Act.

The extended limit applies irrespective of whether the investigation follows the criminal or civil route.

12.5 Offences relevant to the twenty year rule

Finance Act 1994 section 12(7) lists some offences of fraud or dishonesty that are relevant for the purposes of applying the twenty year rule, as follows:

Act…	**Section…**
Customs and Excise Management Act 1979	100(3), 136(1), 159(6), 167(1), 168(1), 170(1) and (2), and 170B(1)

Betting and Gaming Duties Act 1981	24(6), schedule 1 paragraph 13(3) and schedule 3 paragraph 16(1)
Finance Act 1993	31(1) and (3)
Finance Act 1994	41(1) and (3)

The list is not exhaustive. Other relevant offences include:

- attempting or conspiring to commit an offence of fraud or dishonesty; and
- inciting the commission of such an offence.

For guidance on the treatment of offences involving dishonesty see X-52 Civil treatment of evasion and X-53 Offences.

12.6 How to work out the three year and twenty year time spans

The three year and twenty year time limits run from the time that the liability to duty arose. This will be:

- the duty point in the case of excise duty on goods; or
- in any other case, the time when the duty was charged.

Finance Act 1994 section 12(6) refers.

13. Time limits for other excise assessments

13.1 Further one, three and twenty year rules

Section 12 of this guidance describes the time limits for assessments to excise duty under section 12 of the Finance Act 1994. The time limits for most other excise assessments are in section 12A of that Act.

Specifically, the time limits in section 12A apply to assessments for relief that has been wrongly given and assessments under provisions in other Acts, as listed in the table at paragraph 1.4. Exceptions are dealt with below.

Again, there are one, three and twenty year rules.

13.1.1 One year rule

The one-year evidence of facts rule (Finance Act 1994 section 12A(4)(b)) is exactly the same as that for assessments under Finance Act 1994 section 12.

13.1.2 Three year rule

There is a difference with the three-year rule. An assessment under section 12 must be made within three years of the time when the liability to duty arose. In contrast, any assessment to which section 12A(4) applies must be made within three years of "the relevant time".

The "relevant time" as it affects each section of legislation is given in section 12B(2) of the Finance Act 1994 (for details, see section 29). For example, the "relevant time" for an assessment made and notified under section 94 of the Customs and Excise Management Act 1979 is the time at which the goods in question were warehoused.

13.1.3 Twenty year rule

The twenty-year rule described in paragraph 12.4 of this guidance applies equally to the assessments noted in this paragraph. Finance Act 1994 section 12A(6) refers.

13.2 Time limits for assessments to recover excess payments by the Commissioners

Assessments made to recover excess payments by the Commissioners are not caught by any 'capping' provisions such as the three-year rule that attaches to most excise assessments. Instead, you have **two years** from receipt of sufficient evidence of facts in which to make your assessment. Finance Act 1997 Schedule 5 paragraph 16 refers.

The two years will run from the date you have quantified the erroneous payment and are in a position to make your assessment to best judgement. This two-year rule contrasts with the one year evidence of facts rule for most other assessments.

Although the three year ‘cap’ does not apply to such assessments, you must not make an assessment to recover an amount paid more than three years earlier without first consulting the Errors and Assessments team.

13.3 Time limits for assessments relating to mixing of rebated oils

No time limits are specified for assessments made in respect of the mixing of rebated oils. However, under section 20AAB(5) of the Hydrocarbon Oil Duties Act 1979 such assessments are treated as though they are assessments under Finance Act 1994 section 12(1). This means that the time limits described in section 12 of this guidance will apply.

13.4 Time limits for assessments of amusement machine licence duty (AMLD)

An assessment to recover AMLD when a default licence is issued may not be notified more than one year after the due date specified in the relevant default notice. The Betting and Gaming Duties Act 1981 Schedule 4A paragraph 6 refers.

There is no three-year time limit attaching to such assessments, but the default notice itself is restricted to the previous three years (or twenty years in cases involving fraud or dishonesty).

For guidance on these assessments see the section on retrospective licensing in X-24 Amusement machine licence duty.

14. Evidence of facts

14.1 The one year rule – evidence of facts

Assessment time limits are covered in depth in sections 11 to 13 of this guidance. The one-year rule applies to all excise assessments including those issued in the course of criminal and civil evasion.

You cannot make an assessment at any time after:

Finance Act 1994 sections 12(4)(b) and 12A(4)(b)

> "……the end of the period of one year beginning with the day on which evidence of facts, sufficient in the opinion of the Commissioners to justify the making of the assessment, comes to their knowledge''.

…

14.2 Meaning of "comes to their knowledge''?

The words "comes to their knowledge" are crucial. Only the assessing officer can say when the necessary evidence was obtained, that is, when the facts became known. 'Knowledge' in this context refers to actual knowledge, not what has been referred to as 'constructive' knowledge. In other words it is the actual facts known to the Commissioners that are pertinent, not what they could have, or ought to have, found out. The fact that the information was available, but the officer failed to recognise the significance of the information and obtain it, does not fulfil the requirements of the law. We are protected in this viewpoint by the High Court decisions of Woolf J, as he then was, in **Van Boeckel, QB Dec 1980 [1981] STC 290** and Potts J in **The Post Office, QB May 1995 [1995] STC 749**.

"In the very nature of things frequently the relevant information will be readily available to the tax payer, but it will be very difficult for the Commissioners to obtain that information without carrying out exhaustive investigations." **Ref: Van Boeckel, QB Dec 1980 [1981] STC 290.**

"…. evidence of facts [should be construed as] evidence of facts giving rise to a particular assessment. This is not the same as the date on which the Customs should have been aware that there was an under declaration of tax, i.e. the date on which the Customs could be said to be fixed with constructive knowledge of an error in the taxpayer's returns". **Ref: The Post Office, QB May 1995 [1995] STC 749.**

(In the Post Office case, the court used the earlier ruling in the case of **M Spillane QB 1989, [1990] STC 212**, with regard to its findings on the 'knowledge' required for evidence of facts.)

14.3 Significance of "the" assessment

Note that Finance Act 1994 sections 12(4)(b) and 12A(4)(b) refer to the making of **"the"** assessment. The clock starts ticking under the one year rule when the last piece of material evidence comes to the attention of the Commissioners which justifies the raising of the particular assessment in question.

A trader may argue that an assessment is out of time because evidence to justify an assessment was available more than one year earlier. However, the pertinent question is - "Was the piece of evidence critical to **the** assessment which was made?"

"... evidence of facts [should be construed as] evidence of facts giving rise to a particular assessment.*"

Ref: The Post Office, QB May 1995 [1995] STC 749

* our emphasis

14.4 Meaning of "sufficient"

"Sufficient" means enough information to calculate your assessment to best judgement. The one-year time limit will not necessarily begin to run simply from when:

- you knew something was wrong;
- a different office passed on information to you or a colleague which was not pursued;
- a previous officer knew something was wrong; or
- the Department had access to information. For example, during an audit visit you may study records that were available but not consulted during a previous visit. In this instance, the time limit of any assessment raised would **not** run from the date of the previous visit.

It is important to note that the relevant time is when the facts first become available to the Department and not just to the officer who is making the assessment; and the time limit does not begin to run simply when you know something is wrong but when you have sufficient information on which to base an assessment. Examples of case law defining the term 'sufficient knowledge' can be found in the section on evidence of facts in VAT guidance V1-35 Assessments and error correction.

If you know something is wrong and then neglect to consult records that are readily available, a trader could argue that the time limit began to run from the date you had access to such records. To avoid argument it is vital that you pursue a case as soon as your suspicions are aroused.

The clock starts to tick when you have received the last piece of information that enabled you to make the assessment. The question you must ask yourself is; “Did I (or another officer) receive the material information on which I am basing this assessment within the last 12 months?’’ If the answer is “no”, you cannot make an assessment under the ‘one year rule’.

14.5 Change in point of view

A change in viewpoint or interpretation of the same facts does not constitute new evidence and the time limits still apply from when the facts enabling you to make an assessment were first obtained. It follows that you cannot use a re-interpretation of facts obtained more than one year earlier to argue that the assessment would still be within the one-year rule. You should bear this in mind when consulting other offices.

14.6 New evidence

If new evidence of facts (i.e. evidence previously unknown to the Department) comes to your knowledge you may make further assessments in respect of the same period whether or not that period was reviewed on a previous visit. It follows therefore that where a number of separate lines of enquiry are being followed and further information is needed, each one when completed may lead to a separate assessment for the same period. The one-year rule runs in each case from the date that the Department receives the appropriate information, which may or may not be the date of the visit.

15. Best Judgement

15.1 The principles of best judgement

When you make an assessment under Finance Act 1994 section 12(1) (see paragraph 2.2) you must ensure that the assessment is made to **best judgement**. This means that, given a set of conditions or circumstances, you must take any necessary action and produce a result that is deemed to be reasonable and not arbitrary.

When preparing an assessment to best judgement (including prime assessments) **all** the following principles must be adhered to:

- the Commissioners should not be required to do the work of the taxpayer;
- the Commissioners must perform their function honestly and bona fide;
- the Commissioners should fairly consider all the material before them and, on that material, come to a decision which is reasonable and not arbitrary; and
- there must be some material before the Commissioners on which they can base their judgement.

It is important to remember that whatever method of calculation is used, the aim is to arrive at a figure that is fair rather than seek to use a method that would give the highest value assessment.

Although there is no reference to best judgement in other excise assessment provisions, you should apply the same basic principles and make such assessments to the standard of best judgement.

15.2 Lack of information

Where a revenue trader fails to keep comprehensive records or is unable or unwilling to provide all the information we require, an officer would be fully justified in making an assessment based on the information available. Clearly, the accuracy of the assessment will suffer from the absence of complete information but this is acceptable, as long as the best judgement assessment is fair and reasonable. It is not the responsibility of the officer to reconstruct absent records or to seek records that are unavailable. It is the responsibility of the trader to provide this information. If traders dispute the amount of assessments so raised, it is their responsibility to provide more information or reconstruct their records as appropriate.

The following extracts from case law illustrate the principles of best judgement and will serve to help officers who may experience difficulty in knowing how far their investigations need to be extended.

“Best judgment is not the equivalent of the best result or the optimum

conclusion. It is a reasonable process by which an assessment is successfully reached."

Ref: M & A Georgiou t/a Mario's Chippery [1995] STC 1101

"...is not required to possess and deploy the deductive powers of Sherlock Holmes and the clairvoyance of Madam Arcarti provided that the assessment raised is not in excess of what could reasonably be payable."

Ref: Schlumberger Inland Services Inc. (1987) STC 228

"It should be recognised, particularly bearing in mind the primary obligation, to which I have made reference, of the taxpayer to make a return himself, that the Commissioners should not be required to do the work of the taxpayer in order to form a conclusion as to the amount of tax which, to the best of their judgment, is due. In the very nature of things frequently the relevant information will be readily available to the taxpayer, but it will be very difficult for the Commissioners to obtain the information without carrying out exhaustive investigations. In my view the use of the words "best of their judgment" does not envisage the burden being placed on the Commissioners of carrying out exhaustive investigations. What the words "best of their judgment" envisage, in my view, is that the Commissioners will fairly consider all material placed before them, and on that material, come to a decision which is reasonable and not arbitrary as to the amount of tax which is due. As long as there is some material on which the Commissioners can reasonably act then they are not required to carry out investigations which may or may not result in further material being placed before them."

Ref: Van Boeckel v C & E QB Dec. 1980,(1981)STC 290

15.3 Methods of calculation

There is no single or ideal method of calculating arrears in those cases that give rise to a best judgement assessment. The nature of the business and the records maintained, and of course, the Excise regime involved will usually provide an indication to the best approach. There are a number of techniques available that are outlined in the relevant regime guidance. Officers are also recommended to liaise with the Units of Expertise for the regime in question.

Clearly, assessments based on one method and confirmed or supported by means of another are to be preferred.

15.4 Best practice

Do not:

- pluck a figure from "thin air" or base your judgement on "gut instinct"; or
- discard any material which you feel is relevant.

Do:

- take care when performing calculations. If the calculation is complex ask a colleague to check it;
- remember, the strongest evidence will always be that which the business agrees with in principle;
- ensure that your assessment is not artificially high in the hope that the business will be forced to provide additional evidence;
- remember that you must be able to demonstrate the credibility of your assessment. Always ask yourself if your projections are within the capabilities of the business.

Finally, remember that you **do not** have to carry out exhaustive investigations.

15.5 Assessments deemed not to have been made to best judgement

If an assessment has not been made to best judgement it is deemed invalid, and cannot be maintained. In legal terms an invalid assessment has never existed. In certain circumstances, the error may be cured and a valid assessment made, subject to the time limits applicable to the original assessment. For example, a bulk period assessment that includes out of time accounting periods (see paragraphs 12.3.1 and 16.8) may be replaced by an assessment that falls within the time limits.

An error solely in the notification will not render an assessment invalid, and can be rectified by renotification of the assessment, as long as renotification falls within the statutory time limits for making an assessment (see paragraph 11.4).

15.6 Record of decision-making

When you make an assessment you must maintain records to support your decision. This is extremely important, as the person to whom the assessment is notified may appeal against it and you may have to explain your decision to the tribunal. You do need to have sufficient information to justify your decision and this information must on the balance of probability support the best judgement assessment.

16. Making and notifying assessments

16.1 Establishing a recoverable debt

Excise assessments are provided for in the Finance Act 1994 and other Acts as a means of establishing a debt which can then be pursued as a debt due to the Crown – see paragraph 16.10 about recovery.

Although the various legal provisions require the Commissioners to make and notify the amount of an assessment, they do not specify any particular manner or time by which the notification is required to take place. In the exercise of their management powers, the Commissioners have devised certain forms and procedures to make and notify assessments (explained in this and the following sections).

16.2 Definition of when an assessment is "made"

Although there is no legal definition of what 'made' means, the courts have interpreted the law to mean that an assessment is 'made' once you have finished calculating the amount due and a **final** decision to assess that amount has been taken. This is normally considered to be when the amount has been quantified, documented, checked, signed and dated. The documentary evidence of having made an assessment may be, for example, the signed and dated schedules.

The raising of a Form EX 601, the document used to notify an assessment, is a **consequence** of the decision to assess, rather than the actual 'making' of the assessment itself.

Often, however, the EX 601 may be the only documentary evidence of the making of an assessment and the date it was completed may have to be relied upon to show when an assessment was 'made'. The EX 601 should normally be completed on the same day as the assessment is made or shortly thereafter.

16.2.1 Example of a 'made' date

There may be occasions where an amount has been quantified, documented, checked, signed and dated on a separate schedule, but not yet transferred onto a Form EX 601. If you took the final decision to assess the amount calculated at the time you signed and dated the schedule, the assessment was made at that time and **not** when the EX 601 was completed.

16.3 Difference between the making and notification of an assessment; time limit implications

Our view of the law is that the assessment of the amount due and its notification to the person concerned are separate and distinct operations. This is based on the wording of the relevant legal provisions, eg Finance Act 1994 section 12(1), (1A) and (3).

The principle that an assessment and its notification are separate operations has been applied in a number of court decisions in VAT. For further information, see the section on making and notifying assessments in V1-35 Assessments and error correction.

The legislation prescribes time limits only for the making of an assessment. It does not prescribe any time limit for the notification of an assessment. However, our published practice – for all assessments made on or after 1 March 2001 – is that we will rely on the date of notification of an assessment as the material date for time limit purposes. This will demonstrate that the assessment was indeed made in time. For more about this policy see section 11.

16.4 Who to assess

For guidance on who to assess see section 17.

16.5 When to assess

You should assess as soon as you have sufficient evidence to justify making an assessment. The few exceptions to this rule are as follows:

16.5.1 De minimis limit

You should not normally make an assessment when you discover an error where the error or the total value of the errors falls below the de minimis limit of £100. However, if the errors are persistent or it is felt that the issue needs to be exceptionally reinforced, you may assess irrespective of the de minimis limit. Where appropriate, you should advise the trader to adjust for errors below this limit in their records.

16.5.2 Accounting period not yet ended or return due date not expired

You must not assess:

- for an accounting period which has not yet ended (where an excise trader has fixed accounting periods);
- before the due date for a return unless the return has already been rendered; or
- unless a fully processed return or prime assessment is on file in the case of underdeclarations.

16.5.3 Seized goods

Our policy is not to assess for duty on goods that have been seized. This is because seizing the goods effectively secures the duty.

In cases where a person is liable to pay duty on a quantity of goods, some of which have been seized, you may assess for the duty on the goods that have not been seized. The explanatory letter you send with the assessment should identify the amount seized and should indicate how the assessed amount has been arrived at, ie (goods on which there is a liability to duty due **less** goods seized **equals** goods on which the duty due is assessed).

Evidence obtained from a seizure may prove sufficient (when taken with other evidence) for you to make and notify a best judgment assessment in respect of earlier loads where excise goods were smuggled. See the example at paragraph 28.2.

16.5.4 Investigation cases

It may not be appropriate to assess as soon as there is sufficient evidence if to do so would prejudice an investigation. Prior to taking assessment action in such cases, consult the case solicitor and/or Policy and ensure that authorisation is recorded at the appropriate level within Investigation to support not making the assessment at the earliest opportunity. It is essential that the matter is kept under constant review and an assessment is made within the prescribed time limits so that the ability to secure the revenue debt is not lost.

16.6 Who makes the assessment? (including fraud cases)

Follow the advice given on this subject in the section on making and notifying assessments in VAT guidance V1-35 Assessments and error correction.

16.7 Allocation of duty to accounting periods

When assessing excise duty from a trader who has fixed accounting periods, you should allocate the duty, where possible, to the periods in which the liability arose.

If, however, it is not possible to do so, or you have difficulty in doing so, you may:

- make a “bulk” assessment (see paragraph 16.8); or
- use best judgement to allocate the duty to return periods by whichever method is fair and reasonable taking account of the information known about the business. This may, for example, be a straightforward division (equal amounts per return period), or on a pro rata basis in line with previous, or subsequent, verified declarations.

16.8 “Bulk” assessments (global assessments)

If you are unable to allocate underdeclarations of duty to specific periods, or you have difficulty in doing so, you may make a “bulk” assessment. That is, an assessment that covers more than one accounting period.

Make sure that you insert the start and end dates of the bulk assessment period on the assessment form (EX 601) as the absence of these dates may render the assessment invalid. You must also ensure that no part of the bulk assessment period falls outside the three-year assessment time limit as this will make the whole assessment invalid. See paragraph 12.3.1.

16.9 Payment of excise assessments

Form EX 601 instructs the assessed person to pay the amount due immediately to the appropriate accounting centre. In this context, 'immediately' means as soon as is reasonably practical, which is generally interpreted as seven to ten days.

16.10 Recovery of excise assessments

Amounts assessed as due from any person are deemed to be amounts of the duty in question and may therefore be recovered as debts due to the Crown.

The section on excise duties in S8-25 Civil recovery explains:

- the various powers to recover excise debts (eg Finance Act 1994 sections 12(3) and 12A(3));
- the policy on pursuing persons liable, particularly where there is joint and several liability; and
- when recovery action should be taken (normally only once the statutory 45 day review period has expired).

17. Who to assess

17.1 The correct legal entity

The majority of excise assessment provisions refer to a "person" who may be assessed. Other provisions allow the Commissioners to assess, for example, the "occupier of the warehouse", "the proprietor of the goods" or "the master of the ship".

No matter which provision you are making your assessment under, you **must** ensure that you make it against the correct legal entity. In most cases you should have little problem identifying who this "person" is as they will be registered with the Department (or approved, authorised etc, as appropriate).

In other cases it may seem obvious who the "person" is as the assessment provision, or the regulation that determines who is liable to pay the duty, will specify, eg "the proprietor" or "the person shown … as having arranged the guarantee". But even then you must ensure that you identify and assess the correct entity. For example:

- "proprietor" for the purposes of a CEMA section 94 or section 94/95 assessment is quite widely defined and includes "any owner, importer, exporter, …" (CEMA section 1(1) refers);
- an "importer" who is liable to pay duty on imported excise goods may be a company, an individual or a number of individuals;
- when rebated oil has been used as fuel for, or taken into, a road vehicle, only the "person" - coach company, haulage company etc - who actually used or took the oil into the vehicle may be assessed under HODA section 13(1A) (and not, for example, a filling station owner who is found to be supplying rebated oil); and
- when a bogus company has been set up to perpetrate a fraud, you should not assess that fictitious entity, but the person who in reality is liable to pay the duty.

If, having consulted your line management and relevant guidance, you are still unsure who is liable and may be assessed in a particular case, you should seek the advice of the appropriate regime Unit of Expertise. They may, if necessary, refer you to the relevant team in Excise Operations or Policy.

17.1.1 Joint and several liability

In cases involving joint and several liability, you should only make and notify an assessment to the person who has a primary liability to pay duty. Those who have a secondary (joint and several) liability should not be assessed. Instead they should be notified of their liability by letter.

See sections 4 and 20 for more about cases involving joint and several liability.

17.2 Assessments to excise duty (see section 2)

Before making and notifying an assessment to excise duty you **must** ensure that:

- an amount of excise duty has become due; and
- you have identified the person liable to pay the duty.

The **time when the duty becomes due**:

- in the case of excise duty on goods, is determined by an excise duty point (see below); and
- in the case of other excise duties, is determined by provisions relevant to the specific regime.

Provisions in various Acts and regulations specify the **person liable** to pay the duty.

Examples:

Tobacco Products Regulations 2001

12 Excise duty points

(1) Subject to the provisions of this regulation, the excise duty point for tobacco products is the time when the tobacco products are charged with duty.

…

13 Person liable to pay the duty

(1) The person liable to pay the duty is the person holding the tobacco products at the excise duty point.

Betting and Gaming Duties Act 1981

General betting duty

5B Liability to pay

(2) In the case of bets made with a bookmaker in an accounting period the general betting duty shall be paid-

(a) when it becomes due, and

(b) by the bookmaker.

17.2.1 Excise duty on goods: excise duty points and liability to pay

Under section 1(1) of CEMA an excise duty point "has the meaning given by section 1 of the Finance (No 2) Act 1992", which provides as follows:

1 Powers to fix excise duty point

(1) Subject to the following provisions of this section, the Commissioners may by regulations make provision, in relation to any duties of excise on goods, for fixing **the time when the requirement to pay any duty with which goods become chargeable is to take effect** ("the excise duty point"). [Emphasis added.]

The tobacco products example given above is a simple example of regulations fixing an excise duty point.

In most cases the regulations that fix a particular excise duty point will also specify the person(s) liable to pay the duty at that duty point (as above). Where more than one person is liable to pay, the regulations may also specify whether that liability is to be both joint and several.

17.2.2 What if there is more than one excise duty point?

Liability to pay duty, and hence the person we assess, is in most cases effectively determined by the excise duty point, and different duty points often lead to different liabilities. It is particularly important, therefore, that you seek to establish all the circumstances surrounding a case before you make an assessment. Identifying the correct duty point will lead you to assess the right person, for the right reason.

The basic rule is that excise goods can only pass an excise duty point once. Where you identify a sequence of irregularities that each produce an excise duty point you should base your assessment on the earliest duty point.

17.2.3 What if regulations do not specify the person liable to pay the duty?

In the few cases where regulations fix an excise duty point but do not specify the person liable to pay the duty at that duty point – see, for example, regulation 4(2)(f) of the Excise Goods (Holding, Movement, Warehousing and REDS) Regulations 1992 - you will need to choose the person to assess.

This should simply be a matter of deciding on someone with sufficient connection with the goods at the duty point. Where there is more than one person, you may need to make a decision based on who you consider most culpable.

As you may be called upon to explain why you chose to assess a particular person, you must be able to reasonably justify your choice.

17.3 Other excise assessments (see sections 5 to 9)

With other excise assessment provisions, the person to assess will be specified in the particular provision. For example:

- the **proprietor** when there is a deficiency in goods which have been lawfully permitted to be taken from a warehouse (CEMA section 95);

- the **producer** or the **supplier** (depending on the specific circumstances) when there is unapproved mixing of oils (HODA section 20AAB(4)); or
- the **person** who used the oil, or was liable for oil being taken into a road vehicle, in a case involving misuse of rebated heavy oil (HODA section 13(1A)).

But you still must ensure that you identify and assess the correct entity.

18. Notifying assessments – forms, letters and schedules

18.1 Form EX 601 (Officer's assessment/civil penalty)

All excise assessments must be notified on Form EX 601 except:

- prime assessments generated centrally
- those notified together with a customs debt on Form C18 (see paragraph 19.5)

The form is the main accounting document for excise assessments and is used:

- to notify the debt to the person liable;
- to notify payment by the person liable; and
- to update the excise accounting systems.

It is also used:

- to notify civil penalties; and
- to authorise repayment of overdeclarations.

Section 30 explains how you (the assessing officer) should complete the form.

You **must** also obtain an Assessment Reference Number for your assessment and follow the management control procedure set out at section 31 before you notify the assessment.

You should send the form together with Form EX 603, an explanatory letter and, in complex cases, a schedule.

18.1.1 The assessing officer

You are the assessing officer if you **made** the assessment that is to be notified on Form EX 601. For further guidance on who makes the assessment, see paragraph 16.6.

18.2 Form EX 601A (Continuation to officer's assessment/civil penalty)

Form EX 601A is a continuation to the EX 601. It does not duplicate all the details shown on the EX 601 and is simply intended for use where there are insufficient lines available on the EX 601 to record all parts of an assessment or civil penalty.

Section 30 explains how to complete the form.

18.3 Form EX 602 (Amendment to officer's assessment/civil penalty)

Form EX 602 is used to reduce or withdraw an excise assessment or civil penalty notified on Form EX 601. See sections 23 to 25.

18.4 Form EX 603 (Excise assessment/civil penalty – explanatory notes)

You should send a copy of Form EX 603 with every EX 601. It provides information about the codes used on the EX 601 and advises the recipient about the right of appeal against an assessment or civil penalty.

You do not need to send a copy of Notice 990 Excise and Customs Appeals with the EX 601 unless the assessed person asks for one.

18.5 Checking and countersigning Forms EX 601 and EX 602

18.5.1 Form EX 601 – second signature

Once completed and signed by the assessing officer, form EX 601 should also be signed by a second officer. As there is no requirement for assessment underdeclarations to be authorised, the second signature may be that of a checking officer.

The functions of the checking officer are to check that:

- the EX 601, explanatory letter and any schedule have been completed correctly and accurately; and
- arithmetical calculations are accurate.

This process is particularly important as, unlike in other regimes, there is no computer validation of the EX 601 prior to its issue.

It is not the responsibility of the checking officer to confirm whether or not the assessment is technically correct. The checking officer may be a colleague, of any job band, who has checked the documents and calculations for accuracy or a line manager who has carried out these functions during the processing of the case.

In addition to the above checks, local procedures should ensure that (where practical to do so) line managers examine assessments for technical accuracy, consistency and use of best judgement.

Authorisation (a countersignature) is **always** required when an EX 601 contains an overdeclaration. The levels at which the form must be countersigned are set out in the countersignatory limit table at section 32. In such cases, the authorising officer should also carry out the functions of the checking officer.

Countersignatures are an internal management assurance tool and do not form part of the making of an assessment. A countersignature is **not** required to **make** an assessment.

18.5.2 Form EX 602 – ‘checked by’ and authorising signature

Form EX 602 makes provision for both a checking officer and an authorising officer to sign.

Authorisation (a countersignature) is **always** required when an assessment is being reduced or withdrawn. The authorising officer should also carry out the functions of the checking officer (as described above for Form EX 601) or ensure that they have been carried out by a third party. In cases where the reduction or withdrawal follows a departmental review, the review officer should countersign the form.

Section 24 explains more about using Form EX 602.

18.6 Explanatory letters and schedules

When you notify an assessment using Form EX 601, you should send the form together with a letter which explains the reason for the assessment. The letter should refer to the applicable primary and secondary legislation, including the legal provision under which you have made the assessment and, where relevant, provisions that prescribe, for example, the duty point, the person's liability to pay and the time for payment.

If the person you have assessed understands fully the reason for the assessment then it is less likely that they will appeal. Equally, if a person does decide to appeal, we should have explained the basis of the assessment to them. In the Court of Appeal judgment in **The Arena Corporation Limited [2004] EWCA Civ 371** - a case concerning insolvency proceedings following the notification of a joint and several liability to pay duty under regulation 7(2) of the Excise Duty Points (Duty Suspended Movements of Excise Goods) Regulations 2001 - the Vice-Chancellor made the following concluding comments:

> "In circumstances such as these it is essential that the procedure is fair. I understand that there is no prescribed form of assessment and no complaint was made about the form used in this case. Nevertheless it is important that the Commissioners should specify either in the assessment or a letter accompanying it what irregularity they rely on and the facts said to support the contention that the person assessed caused it. This would enable a person in receipt of such an assessment to challenge its propriety. If no such information is given and the person assessed merely appeals then the onus is on him to disprove causation without knowing what he is alleged to have caused. This could be oppressive, the more so as he is required to pay the assessed duty before appealing unless the Commissioners agree or the Tribunal orders otherwise."
>
> **Ref: The Arena Corporation Limited [2004] EWCA Civ 371**

The explanatory letter should also explain the person's right to a departmental review and should give the contact address of the review officer. All letters should include the standard paragraph:

If you do not agree with the decision in this letter, you can ask for a formal Departmental review. Your request should be in writing, and set out the reasons why you do not agree with the decision. It should be sent within 45 days of the date of this letter.

In complex cases, you should also include a detailed (signed and dated) schedule of arrears.

All letters and schedules must contain a statement to the effect that they form part of, and should be read in conjunction with the EX 601.

18.6.1 Cases involving joint and several liability

The explanatory letter sent with the assessment should mention if you are notifying another person of a joint and several liability to pay the duty (see section 4).

19. Notifying assessments in particular situations

19.1 Notifying an assessment where more than one person has a primary liability to pay excise duty

In certain situations it is possible for more than one person to have a primary liability to pay excise duty - see section 4. In such cases, the assessment should be notified to both (or, where necessary, all) persons as follows.

Form EX 601 should state the full name and address of both persons: "Person A, Address W and Person B, Address X". The explanatory letter should also state the full name and address of both persons.

You should sign and date identical copies of the explanatory letter. However, there can only be one copy of the EX 601 as it is a hand-written form. Photocopy each of the two pages that are to go to Person A (pages (1) and (2) of the form) and write on the top of each copy in red ink "I certify that this is a true copy of the original document". Sign and date each copy.

Send the original (signed and dated) EX 601 and one copy of the explanatory letter to person A, notifying them of the assessment. Send the photocopy EX 601 and the other copy of the explanatory letter to person B, notifying them of the assessment. In both cases, include an EX 603.

19.2 Notifying an assessment where the person liable is missing

In cases where the person liable to pay the duty or other amount due is missing, you should still make any assessment without undue delay. Although the person's whereabouts may not be known at the time, you must ensure that you make and notify the assessment to the last known address within the appropriate time limits.

If the person is subsequently located, send them a copy of the assessment, bearing the original notification date, together with a covering letter.

19.3 Notifying an assessment where the person liable is in another EU Member State

Where an irregularity occurs or is detected in the UK during an inward intra-EU movement of excise goods, the non-UK principal to the movement guarantee may be assessed for the duty due. All such assessments are notified via the Mutual Assistance Liaison Point in Glasgow. Details of the procedure to follow are in X-42 Excise Goods: Holding and Movement.

19.4 Notifying excise and VAT assessments – removal of goods from warehouse

In a case where you have made assessments for both excise duty and VAT in respect of a removal of goods from warehouse, you should notify the assessments separately.

Do **not** include VAT on the excise assessment form (EX 601). The two taxes have different procedures following assessment. In VAT there is a right of appeal to the Tribunal; in excise that right only applies to a decision taken on review. The two systems must be allowed to function properly. A joint notification is very likely to confuse, or may be challenged.

For guidance on notifying assessments for VAT due on removal of goods from warehouse, see V1-35 Assessments and error correction.

19.5 Notifying an assessment on Form C18 (Post Clearance Demand Note) - goods imported from outside the EU or intra-EU movement not in free circulation

In certain circumstances, an assessment to excise duty may be notified on a Form C18 Post Clearance Demand Note, rather than an EX 601.

Where a customs debt is incurred on goods imported into the UK from outside the EU, a C18 may be issued for the customs duty and/or import VAT that is due. If the goods are liable to excise duty, an assessment for the amount due may also be notified on the C18 (see Customs Tariff Volume 3 Part 3 and Appendix C7). This is provided that:

- the person liable to pay the customs duty and/or import VAT (the customs debtor) is also the person liable to pay the excise duty; and
- the notification makes it clear that an assessment to excise duty has been made and explains the reason for that assessment.

Example

Excise goods subject to the external Community transit procedure are imported into the UK.

The goods are unlawfully removed from customs supervision. A customs debt is incurred under Article 203 of the Community Customs Code (Council Regulation (EEC) No 2913/92).

Article 203 also specifies the customs debtor(s).

A C18 demand may be issued to the customs debtor for any customs duty/import VAT that is due.

An excise duty point is created at the time that the customs debt is incurred, under regulation 4 of the Excise Duty Point (External and Internal Community Transit Procedure) Regulations 1998.

Under regulation 6 of those regulations, the person liable to pay the excise duty is the customs debtor (or any other person who brings about, or assists in bringing about, the customs debt).

An assessment to excise duty may be made under Finance Act 1994 section 12(1) or 12(1A) and notified to the customs debtor on the C18.

An explanatory letter sent with the C18 should explain the reason for the assessment.

19.6 Notifying a decision by written demand

The replacement in 1997 and 1998 of various powers of recovery with powers of assessment means that the only situation where it may be necessary to notify a decision by demand is where drawback is cancelled (see paragraph 9.4). Please contact the Errors and Assessments team if you consider it necessary to notify a decision by demand in any other circumstances.

Where, exceptionally, it is necessary to notify a decision by demand, our policy is to limit it to both the three-year rule applicable to the period of duty and the one-year rule for making assessments (see section 11).

These time limits only apply to written demands that notify a decision to recover money. They do not apply to demands that may be issued as part of normal debt management procedures resulting from non-payment of assessments.

20. Notifying joint and several liability

20.1 Notifying joint and several liability to pay excise duty

Making and notifying an assessment to a person with primary liability to pay excise duty establishes their liability for the debt. Once that liability is established, if the amount is not paid, it may be recovered from those persons who have a secondary, joint and several liability to pay.

Such persons should not be assessed. Instead, they should be notified of their joint and several liability by letter, normally at the same time as the assessment is notified to the person with primary liability.

20.2 What should a letter notifying joint and several liability contain?

The notification letter should explain the legal provisions that create a person's joint and several liability and demand payment by a specified date. It should state the name and address of the person who has been assessed, and include a copy of the assessment.

The letter should clearly explain the reason why the person is considered to have a joint and several liability – particularly if you consider them liable because they caused the irregularity that gives rise to the assessment (see the extract from the Court of Appeal judgment in **The Arena Corporation Limited** at paragraph 18.6).

The letter should also advise the person with secondary liability of their rights to review and appeal.

20.3 Are there time limits for notifying joint and several liability?

There are no time limits for notifying joint and several liability. However, as a matter of policy we would expect such notification to be sent some time after the assessment itself is notified only in exceptional circumstances, such as when a person's liability for the duty, or their address, is identified at a later date.

20.4 Joint and several liability: reviews and rights of appeal

Under section 14(2) of the Finance Act 1994, a person whose liability to pay duty results from a decision to assess another person may require the Commissioners to review that decision. Notice must be given in writing within 45 days of the notice setting out the decision. The reviewed decision may then be appealed to the VAT and Duties Tribunals.

Because of this, it is important to identify persons with secondary liability and send the letter notifying them of their joint and several liability at the same time as the assessment is notified to the person with primary liability.

This will ensure that the 45 days the assessed person has to require a formal departmental review will run concurrently with the 45 days the person with secondary liability has to require a review.

If the person with secondary liability is notified at a later date, the 45 days will run from the date of notification, and the debt may not be recovered during this period.

20.5 What if we fail to notify joint and several liability?

If a person's liability to pay duty is affected by a decision to assess another person, ie we know they fall within Finance Act 1994 section 14(2), but we fail to advise or notify them of that decision, we may be required to carry out a review if they ask for one.

However, we may not have to do so if, for example:

- the two persons were closely connected, eg husband and wife; or
- the person whose liability is affected was the guarantor and the contract of guarantee required the principal to tell him about any assessments made.

21. Prime assessments

21.1 Assessments for failure to make returns

A prime assessment is an assessment to duty made and notified, under Finance Act 1994 section 12(1), to an authorised trader who has failed to submit a return. (In this context, the term return refers to the periodic declaration of liability to duty which an authorised trader is required or directed to submit.)

In certain excise regimes, prime assessments are issued centrally by the relevant National Accounting Centres. Officers should be aware however, that there may be isolated instances where the Centre may consider it more appropriate to refer the matter to a nominated regional contact. Officers are therefore advised to consult the relevant regime guidance and to be aware that there may be guidelines issued by the relevant Unit of Expertise.

Prime assessments are presently issued centrally in the following regimes:

- Air Passenger Duty (APD);
- General betting duty;
- Bingo;
- Breweries; and
- Cider and wine producers

When a return is submitted after the issue of such an assessment the assessment is cancelled.

In the absence of a centrally issued assessment, an officer should raise a prime assessment when a trader fails to submit a return.

Where circumstances permit, it is always preferable to obtain the outstanding return rather than issue a prime assessment.

Prime assessments must be made to **best judgement** (see section 15).

22. Reviews and appeals

22.1 Rights to review and appeal

Any person who is the subject of an excise assessment has the right to a departmental review of the decision to assess them. They are advised about this right, for example:

- through the inclusion, in the explanatory letter that forms part of the notice of assessment, of the standard review paragraph (for details, see paragraph 18.6); and
- on Form EX 603, the 'explanatory notes' sent with any assessment (or civil penalty) notified on Form EX 601.

If the person disagrees with the review officer's decision, they can appeal to the VAT and Duties Tribunals. It will be the review officer's decision that is the subject of the appeal.

Persons who are notified of their joint and several liability have the same rights to review and appeal as the assessed person (Section 14(2) of the Finance Act 1994 refers). See section 20.

The review and appeals procedures, and good practice to follow, are detailed in G5-8 Excise and Customs Appeals. Notice 990 Excise and Customs Appeals also gives details of the procedures and of the decisions that may be appealed.

One of the aims of the Department is that the review procedure is not only truly independent from the original decision-making process but is seen as being independent, so that the trade will have confidence in the fairness of the system. A further aim is that most disputes will be resolved at or before the review stage.

Only those cases where there remains a genuine disagreement should reach the tribunal. The review and appeals procedure should lead to an improvement in the quality of decision-making and help to ensure that decisions are consistent and fully explained. It is therefore very important that issuing officers maintain adequate records to support their decision to issue an assessment.

22.2 Review/appealable matters

A person may appeal against liability to the assessment or the amount of the assessment. In practice they are most likely to appeal against the amount of the assessment on such grounds as the method of calculation, best judgement criteria and time limits.

22.3 Requirement for a review (Finance Act 1994 section 14)

This is the **first** stage of the appeals process and is **mandatory**. Appeals against any decision in relation to excise assessments cannot be referred to the VAT and Duties Tribunals without first going through the review procedure. (FA1994 s16(1)).

Any request for a formal review must be made in writing within 45 days of the date of the notice of assessment, although we can agree to review a decision on request outside the time limit. It will clearly be helpful and save time if the person sets out the reasons for the disagreement (this would normally involve the production of additional information).

Remember that explanatory letters should include the standard review paragraph and give the contact address of the review officer (see paragraph 18.6).

The Department has 45 days from the date of any request to review a decision. If the departmental review fails to resolve the dispute the person has 30 days to appeal to the VAT and Duties Tribunals.

When a request for review goes directly to the review officer, it is important that they seek the comments of the assessing officer on the arguments being put forward by the trader. It may be that the trader supplies additional information that has the potential to fully resolve the dispute, in which case the review officer can forward it to the assessing officer, who can then withdraw or reduce the assessment.

On occasion, the assessing officer rather than the review officer may receive a request for reconsideration or review of an assessment, in which case the procedure to follow is set out in the following paragraphs.

22.4 Procedure to follow when request for reconsideration or review of an assessment is sent to the assessing officer

22.4.1 Request for reconsideration or review with no grounds for review or no additional information.

When a person asks for an assessment to be reconsidered or reviewed they will normally state the grounds for a review and may provide additional information. If you receive a request to reconsider or review an assessment where the grounds for review have not been outlined or no additional information has been provided **you must forward the request to the review officer.** The Department has 45 days from the date of any request to review the decision so it is important that the request is sent to the review officer immediately.

22.4.2 Request for a reconsideration or review where the grounds for review are set out or additional information is received

If you receive a request to reconsider or review an assessment where the grounds for review are set out, you should initially examine the trader's request. The Department has 45 days from the date the request was received so it is important that you take **immediate** action upon receipt of a request.

If the grounds for review, or the additional information **fully resolves** the dispute you should deal with the request and reduce or withdraw the assessment.

If the grounds for review, or the additional information does not fully resolve the dispute, or if there is any doubt as to what the appeal is about, you should forward the papers to the review officer **immediately**.

22.4.3 Suspension of debt recovery action

During any period of reconsideration or review debt recovery action should be suspended until the outcome is known. It is essential to keep the accounting centre and any debt management unit advised about the situation.

22.5 The review officer: roles and responsibility

The review officer's roles, responsibilities and procedures to follow are detailed in G5-8 Excise and Customs Appeals. The review officer will consider amongst other things, such matters as the basis of the dispute, the legality of the decision and whether the decision is technically correct. There may be occasions when the review officer will need to contact the assessing officer for further information.

The review officer should not be used to test out assessment decisions before they are issued. There is, however, no objection to alerting the review officer to any decisions which are likely to be contested, providing the assessing officer does not ask if the decision is likely to be upheld. Any such practice may undermine the independence of the system.

Notification of the result of the review must be in writing. The review decision should be copied to the officer responsible for the disputed decision and also to the relevant policy team if they have been involved in the review or have requested copies as a matter of policy.

If the review officer overturns or varies a decision it should not be regarded as a criticism of the assessing officer's individual performance.

22.6 What happens in the event of an appeal

Whilst details of the appeals procedure are contained in departmental guidance G5-8 Excise and Customs Appeals, it is appropriate to provide some information here on how the appeals procedure impacts on post-assessment procedures.

Before an appeal can be heard, a person will normally be required to pay the Department any "relevant duty" that they are liable to pay, under Finance Act 1994 section 16(3). This includes payment of the disputed assessment. The term "relevant duty" is defined in section 17(2) as "any duty of excise". It follows therefore, that assessments made and notified under Finance Act 1994 section 12 will be required to be paid before the Tribunal will hear the case, unless the review officer is satisfied that the duty is otherwise secured or that payment would cause hardship.

Assessments under Finance Act 1994 section 12A(2), or any of the other assessment provisions listed in Finance Act 1994 section 14(1)(ba), are not required to be paid in order for the appeal to be heard. This is because the assessments are deemed not to be for an amount of ‘’relevant duty’’ as defined above.

In the case of assessments under section 8, 10 or 11 of the Alcoholic Liquor and Duties Act 1979, the assessed amount does not have to be paid in order for the appeal to be heard because Finance Act 1994 section 16(3) is specifically disapplied (in relation to such assessments) by section 16(3A).

While the review officer should liaise with debt management units, the assessing officer **must** ensure that the regime accounting centre is promptly notified about any request for review or appeal so that they can advise the relevant debt management unit (see section 31).

23. Reduction or withdrawal of assessments

23.1 Circumstances where an assessment may be reduced or withdrawn

An assessment may be reduced or withdrawn as a result of any of the following:

- a reconsideration of the facts by the officer who issued the assessment;
- a departmental review carried out by the review officer; or
- a tribunal hearing.

23.1.1 Authorisation of a reduction or withdrawal following a local reconsideration by the officer who issued the assessment

Assessment reductions or withdrawals must be authorised in accordance with the monetary limits at section 32 of this guidance. The authorising officer should also carry out the functions of the checking officer (see paragraph 18.5) or ensure that they have been carried out by a third party.

23.1.2 Authorisation of reduction or withdrawal following a departmental review

Assessment reductions and withdrawals must be authorised by the review officer.

23.2 Notification of the reduction or withdrawal of an assessment

23.2.1 Notification to the person issued with an assessment

Once a decision is made to reduce or withdraw an assessment, the person named on the assessment should be notified about the amendment using one of the specimen letters found in section 25. The letter should be sent by either:

- the assessing officer, if the dispute is fully resolved by the officer who issued the assessment; or
- the review officer, following a departmental review or a tribunal hearing.

A copy of the letter should be sent to the debt management unit immediately.

23.2.2 Notification to the accounting centre - Form EX 602

This form is a computer input document and is used to update the Department's accounting records. It should be sent to the accounting centre at the same time as the specimen letter is sent to the assessed person. **The EX 602 should not be sent to the assessed person.** Guidance on the completion and processing of Form EX 602 is in section 24.

24. Completion and processing of Form EX 602

24.1 Form EX 602 Amendment to Officer's Assessment/Civil Penalty

The function of this computer input form is to reduce or withdraw assessments and penalties notified on an EX 601. The EX 602 is used to update the Department's accounting records with the revised details.

The form is usually completed by the assessing officer. They will then forward it to the accounting centre where the original assessment was sent for it to be input to amend the original details line by line.

You **should not** send a copy of the EX 602 to the person against whom the EX 601 was raised. Instead, issue one of the specimen letters in section 25. Give a full explanation, including a schedule if necessary, of the reasons for the reduction or withdrawal.

Do not use an EX 602 to make and notify further assessments (even if you are increasing an amount previously assessed in the same period), nor to raise additional penalties. The EX 602 is intended only to reduce or withdraw liabilities previously notified on an EX 601. Any additional liabilities must be notified using an EX 601.

24.2 Completing Form EX 602

Trader's name and address	Insert the details recorded on the original EX 601
Unique Reference Number	Insert the details recorded on the original EX 601
Vehicle Registration	No longer used
Regime Indicator	Insert the details recorded on the original EX 601
Line Count	The original liability must be reduced line by line. Each line on the original assessment requiring amendment must be separately recorded and amended on the EX 602. You must show the number of the line on the original EX 601 that is being amended.
Existing details	You will need to record the original EX 601 data on the first line of each set of amendment boxes.
New details	Insert here the new details. If an assessment or penalty is to be withdrawn, you must show a zero in the box entitled "Due to HM Customs & Excise". **You must not record a withdrawal as a credit to the trader by recording an amount in the box entitled "Due from HM Customs & Excise"**.

	For example, if you want to withdraw a £250 civil penalty, you would show in the box marked “Due to HM Customs & Excise”, £250 on the existing details line, and a zero on the new details line.
Due to HM Customs & Excise	Enter the existing details as recorded on the original EX 601 held on the trader’s file. If completed a zero should be placed in the "Due from HM Customs & Excise" column on this line. You cannot enter "due to" and "due from" amounts on the same line. It is possible to amend an underdeclaration to nil but you cannot amend it to an overderdeclaration. It may be that in some cases replacement of an underdeclaration by an overdeclaration is required. In this case the underdeclaration should be reduced to nil and a further EX 601 input for the overdeclaration.
Due from HM Customs & Excise	Enter the existing details as recorded on the original EX 601 held on the trader’s file. If completed a zero should be placed in the "Due from HM Customs & Excise" column on this line. You cannot enter "due to" and "due from" amounts on the same line. It is possible to amend an overdeclaration to nil but you cannot amend it to an underdeclaration. It may be that in some cases replacement of an overdeclaration by an underdeclaration is required. In this case the overdeclaration should be reduced to nil and a further EX 601 input for the additional underdeclaration.
Issuing Officer	Insert your surname. You may also include initials and title if you wish (provided sufficient boxes exist), but if you do you must leave a space (1 box) between items. Sign underneath.
Checked by	The checking officer should check the form and the arithmetic calculations for accuracy and sign and date the form. The checking officer may be a colleague of the assessing (‘issuing’) officer or the authorising officer.
Authorising Signature	• Assessment reductions/withdrawals following a local reconsideration by the assessing officer Reductions/withdrawals must be authorised in accordance with the limits in section 32. • Assessment and penalty reductions/withdrawals following a departmental review Reductions/withdrawals must be authorised by the review officer.
Authorising	You must date stamp the form on the date of issue, in

Officer's Date Stamp	the box provided.
Page ….. of …….	To be completed in all cases to ensure that no pages are missed when being input onto the accounting system.

24.3 Processing Form EX 602

As the assessing officer is responsible for the issue of any assessment or penalty, it is appropriate that it should be the assessing officer who completes and submits the EX 602. This would normally be the case even when a review has been conducted by the review officer. In these circumstances the review officer would inform the assessing officer of the outcome of the review, and the assessing officer would complete the EX 602. However, to confirm the independence of the departmental review, it should always be the review officer who notifies the "trader" of the result of any formal review, using the appropriate specimen letters (see section 25) if any amendment has been made. Once the form has been completed and authorised accordingly (see paragraph 23.1), you should dispose of the copies as follows:

Top Copy	should be forwarded to the appropriate accounting centre (as recorded on the EX 601).
Second Copy	should be retained in the traders file for reference

25. Specimen letters of amendment or withdrawal

25.1 Notification of amendment or withdrawal of assessment/penalty

The EX 602 is intended as a computer input document, and should not be issued to the recipient of the EX 601. Instead, the assessing or review officer should send the appropriate specimen letter to the trader. A reason for the amendment should be given and where necessary a schedule should be included. **If the assessment was not an assessment to excise duty (see section 2), delete the words 'to excise duty'.**

25.2 Specimen letter 1

Reduction of assessment(s) attributed to prescribed accounting periods and / or consisting of more than one amount.

(You should use this letter when reducing the amount of any assessment which has/have been allocated, using separate lines of the EX 601, to more than one accounting period. It allows for reduction of each assessment line individually.)

Dear

Unique Reference No:

The Commissioners have reviewed the assessment(s) to excise duty, totalling £…….., notified to you on …….(* and subsequently reduced to £……. on……..……) and now reduce the total of those assessments as follows:

(Give details of original (or subsequently reduced) assessment(s), ie accounting period(s), amounts and totals, together with the reduced amounts and totals, with any necessary explanation.)

(Where the reduction is the result of a formal review …) If you are not satisfied with the outcome of this formal departmental review, you can lodge an appeal with the VAT and Duties Tribunals, which are independent of HM Revenue & Customs. Your appeal should be made on the appropriate forms, which you can obtain, along with an explanatory leaflet, from a tribunal centre or from our National Advice Service. The Notice of Appeal should be sent to the Tribunal Centre within 30 days of the date of this letter and be accompanied by a copy of this letter. The Tribunal Centre for your area is:

Subject to the legal provisions relating to such appeals the amount of £…… is now due from you and should be paid immediately to (insert the address of the relevant accounting centre).

PLEASE ENCLOSE THE DUPLICATE COPY OF THIS LETTER WITH YOUR REMITTANCE.

If, however, you have paid this sum or more against the previously assessed amount(s), your account will be automatically adjusted.

Yours faithfully

* Delete as necessary.

25.3 Specimen letter 2

Reduction of assessment notified in single amount

(You should use this letter when reducing the amount of any bulk assessment notified on an EX 601, that is, a multi-period assessment recorded on one line of the EX 601.)

Dear

Unique Reference No:

The Commissioners have reviewed the assessment(s) to excise duty, totalling £……, notified to you on …….…… (* and subsequently reduced to £……on……) and now reduce it to £…….

(Any necessary explanation and schedule)

(Where the reduction is the result of a formal review …) If you are not satisfied with the outcome of this formal departmental review, you can lodge an appeal with the VAT and Duties Tribunals, which are independent of HM Revenue & Customs. Your appeal should be made on the appropriate forms, which you can obtain, along with an explanatory leaflet, from a tribunal centre or from our National Advice Service. The Notice of Appeal should be sent to the Tribunal Centre within 30 days of the date of this letter and be accompanied by a copy of this letter. The Tribunal Centre for your area is:

Subject to the legal provisions relating to such appeals the amount of £…….is now due from you and should be paid immediately to (insert the address of the relevant accounting centre).

PLEASE ENCLOSE THE DUPLICATE COPY OF THIS LETTER WITH YOUR REMITTANCE.

If, however, you have paid this sum or more against the previously assessed amount, your account will be automatically adjusted.

Yours faithfully

* Delete as necessary

25.4 Specimen letter 3

Withdrawal of assessment / civil penalty .

(If you are withdrawing an assessment completely you should notify the trader using this letter)

Dear

Unique Reference No:

The Commissioners have reviewed the assessment(s) to excise duty/civil penalty totalling £……..notified to you on …….(* and subsequently reduced to £……on…….) and now wish to notify you that it has/they have been withdrawn.

(Any necessary explanation)

Yours faithfully

* delete as necessary

26. Fraud and evasion cases

26.1 Consideration of evasion

You should always consider the possibility of evasion in cases where an underdeclaration of duty is involved. It may be that the underdeclaration is a result of genuine error on the part of the revenue trader. If this is the case, the conduct does not involve dishonest intent. On the other hand, if the underdeclaration is a result of a person's dishonest intent to evade or defer duty, that person may be liable to criminal proceedings or the issue of a civil evasion penalty under section 8 of the Finance Act 1994.

Similarly, you should be alert to the possibility of evasion where traders fail to submit returns. The trader may choose to pay prime assessments because they are lower than the true duty liability or because they have not kept adequate records to enable them to submit returns. Again the trader's action may involve dishonest intent and you should consider whether they may be liable to criminal proceedings or the issue of a civil evasion penalty.

Guidance on the investigation of evasion is in X-52 Civil treatment of evasion and G5-2 Criminal investigation procedures.

26.1.1 Excise civil penalties

Section 9 of the Finance Act 1994 introduced the power to impose penalties when certain requirements set out in excise law were breached. This had the effect of decriminalising more than 60 excise offences. These offences are generally those where it is not necessary to prove dishonest intent. A small number of offences will involve an element of dishonesty or knowledge. There are also some absolute offences which remain criminal.

For further guidance see X-51B Excise civil penalties, X-52 Civil treatment of evasion and X-53 Excise offences.

26.2 Investigation cases

Assessment action **must** be considered in all investigation cases. This should not be regarded as one of the loose ends to tie up at the end of an investigation. It is important to establish at an early stage the amount of revenue due, that there is a legal power to assess, and who to assess.

This section summarises some of the issues you will need to consider in such cases, but LE investigators in particular should also read the section on tax assessments in the Law Enforcement Handbook.

26.3 Assessment time limits

The 'one year' rule (see paragraph 12.2) applies to **all** excise assessments including those issued in the course of criminal and civil evasion investigations. The time clock starts when the Commissioners have sufficient evidence to justify making an assessment (see section 14 Evidence of facts).

The ‘three year’ rule, which establishes how far back you can assess, is extended to twenty years where a person’s conduct involves fraud or dishonesty. This extended period applies irrespective whether the case follows the criminal or civil route (for further information on time limits, see section 11).

In cases of evasion the 20-year rule will normally be applied **only** if the Department pursues offence action, whether by way of civil evasion penalty or criminal proceedings.

26.4 When to assess

Where the amount involved does not exceed £100 it is current policy not to make an assessment. However, in those cases where there is persistent error, or where the issue needs to be reinforced, an assessment can be made and notified irrespective of any de minimis limit.

There will be occasions when the person to be assessed is not the offender you are prosecuting, or the offender may be jointly and severally liable, in which case it may be appropriate to obtain a restraint order. You must seek early legal advice from the case solicitor where an assessment is to be made and a restraint or confiscation order is being planned. For more on restraint and confiscation orders see paragraph 26.5 and 26.6.

For more on when to assess see paragraph 16.5.

26.4.1 Seized goods

Our policy is not to assess for duty on goods that have been seized. But in a case where a person is liable to pay duty on a quantity of goods, some of which have been seized, you may assess for the duty on the goods that have not been seized. See paragraph 16.5.3.

26.5 Effect of assessment on criminal proceedings and restraint

Each case has different circumstances and you should consult the case solicitor prior to assessment action. Whether or not criminal proceedings or restraint action has actually commenced it is extremely important that any assessment is made and notified within the assessment time limits.

In most cases however it is not appropriate to enforce an assessment until criminal proceedings are concluded, because this may prejudice the case or assist a subsequent submission for abuse of process. However, it is desirable to consult the case solicitor, as recovery in certain circumstances may be possible.

You **must** ensure that the regime accounting centre and debt management recovery team are aware that recovery action is suspended pending the outcome of criminal proceedings. Once proceedings have been completed, including any Proceeds of Crime proceedings, it is essential that you advise the regime accounting centre and debt management recovery team of any amounts requiring enforcement action.

If restraint orders have been granted you must **not** take any action to recover the arrears pending the outcome of criminal proceedings.

When assessments are issued related to criminal proceedings that have commenced, you should include the following words in the covering letter to the assessment:

“The assessment consists of/includes arrears of excise duty which are the subject of criminal proceedings, and as a result of this the assessment will not be enforced pending conclusion of the criminal proceedings.

Although the assessment will not be enforced at present, you should note that if you do not agree with the assessment you have 45 days from the date of this letter to request a formal departmental review. Your request should be in writing and set out the reasons why you do not agree. It should be sent to the review officer at: --".

Where restraint action is also being taken you should insert the following:

"The Court has granted a restraint order under section 77 of the Criminal Justice Act 1988. I take this opportunity to remind you that you must not attempt to deal in any goods restrained by the order, as to do so would put you in breach of the order".

Note: In Scotland the restraint order will be under Section 28 of the Proceeds of Crime (Scotland) Act 1995. In Northern Ireland it will be The Criminal Justice (Confiscation) (Northern Ireland) Order 1990.

26.6 Effect of assessment on conclusion of proceedings and confiscation

The amount of the confiscation order will have a bearing on whether or not the assessment should be enforced. Also, where no confiscation order is granted, or where the defendants are acquitted, it may still be appropriate to enforce the assessment. Each case should be judged on its merits in consultation with the case solicitor and policy group.

For more on the interaction of assessment and confiscation action see the section on tax assessments in the Law Enforcement Handbook.

26.7 Debt recovery

Recovery of arrears should be carried out by the Debt Management Unit (DMU). It is important that you remain in close contact with the regime accounting centre and DMU so that you and they are kept informed of all developments.

26.8 Payment of the assessment offered

Although this is very rare in excise cases because of the large sums involved, if payment is offered it is vital, to avoid compromising any subsequent action, that you make it clear it can only be accepted "without prejudice to any action the Commissioners may take under CEMA 1979 or any other enactment".

Follow the procedures outlined in X-53 Excise offences.

26.9 Departmental reviews and appeals

All excise assessments are appealable, including those relating to civil evasion and/or criminal proceedings cases. Any request for a formal review received before departmental offence action has been completed should be undertaken by the review officer in the normal way. The review officer will require access to all relevant papers and information.

There is no power for a review officer to delay making a decision because there is a criminal case going on. However, communication should be a two-way process to ensure that the review officer is privy to all relevant information and in this context the review officer should discuss emerging findings with the investigation case officer before the review is completed. You should ensure that the criminal case solicitor is aware of any review.

If the assessment is upheld in whole or in part by the review officer, the assessed person may then appeal to the VAT and Duties Tribunals. To avoid issues from the criminal investigation being aired at a tribunal prior to the criminal case reaching court, the Department will seek to have any hearing of the appeal against the review officer's decision adjourned until the offence action has been completed.

Although there is no automatic stand-over in such cases, the tribunal will normally agree where either the appellant has consented or criminal proceedings have actually started.

Enforcement action should also normally be suspended. You **must** inform the Tribunal's Division of the Solicitor's Office that the case is subject to offence action.

Whilst it is desirable to ensure that, wherever possible, any criminal proceedings are underway before assessments are issued so that any tribunal appeal can be stood over until the end of the proceedings **it is essential that any assessment satisfies the one-year rule** as explained at the beginning of this section.

Persons who are notified of their joint and several liability to pay excise duty have the same review and appeal rights as assessed persons.

27. Overdeclarations of duty

27.1 How to deal with overdeclarations of duty

You may find that a revenue trader has made an overdeclaration of duty, or a combination of under- and overdeclarations of duty, which result in a net overdeclaration. The assessment form EX 601 provides for the inclusion of both under- and overdeclarations of duty and should be used to generate a repayment of duty where the resultant figure is in excess of £100. An accompanying letter should be sent explaining the reasons for the repayment in accordance with Notice 208 Excise assessments.

For amounts below £100, adjustment will normally be made through the trader's records wherever this is practical. Traders may in any event opt to adjust for the overdeclaration through their records subject to the requirements of the particular regime. Assessment overdeclarations must be authorised in accordance with the monetary limits outlined at Section 32.

The authorising officer must also carry out the functions of the checking officer (see paragraph 18.5) or ensure that they have been carried out by a third party.

28. Examples of where the "extended definition of default" applies

28.1 What the extended definition means in practice

Paragraph 2.4 explains how the extended definition of default in Finance Act 1994 section 12(2A) allows us to make a best judgement assessment under section 12(1) of that Act where there has been a failure to observe EC legal provisions. Paragraphs 28.2 and 28.3 provide examples of how this applies in practice.

28.2 Excise goods smuggled into the UK from another Member State

An inbound lorry is checked at Dover. Hidden behind various items of furniture are 10 pallets of spirits. There is no Accompanying Administrative Document (AAD) (required under EC regulations).

Current policy is that the goods may either be seized or an assessment made and notified for the duty (plus civil penalty). Enquiries reveal that the driver/vehicle had previously made three very similar journeys, eg goods again described as furniture, collected from same supplier etc.

Under Finance Act 1994 section 12(1) we may make and notify an assessment, or assessments, for the duty which would have been due on the previous consignments, provided we have sufficient evidence to show that they were the subject of the same type of default.

28.3 Irregularities involving accompanying documents

The Excise Goods (Accompanying Documents) Regulations 2002, introduced on 1 April 2002, create duty points and identify the persons liable to pay duty when there is a failure to comply with the requirements of EU regulations dealing with accompanying documents.

They therefore specify further 'irregularities' that fall under the extended definition of default and may be assessed under FA 1994 section 12(1).

Examples include:

- failure to complete an AAD in accordance with Community provisions;
- loss of an AAD in transit (constituting a failure to keep); and
- specifying on an AAD a place which was not the intended place of delivery (because it was always intended to deliver the goods to a different place).

29. Assessment time limits: the "relevant time" for assessments made under CEMA provisions or other legislation

Paragraph 13.1 explains the three-year time limit that applies to assessments made under provisions in CEMA and certain other Acts. The "relevant time" as it affects each section of legislation is given in section 12B(2) of the Finance Act 1994 and is as follows:

Act...	**Section...**	**Relevant time...**
Customs and Excise Management Act 1979	61	the time when the ship or aircraft in question returned to a place in the UK
	94	the time at which the goods in question were warehoused
	94, given effect by 95	the time when the goods in question were lawfully taken from the warehouse
	96	the time when the goods in question were moved by pipe-line or notified as goods to be moved by pipe-line
	167	• if the assessment relates to unpaid duty the time when the duty became payable or, if later, the time when the document in question was delivered or the statement in question was made • if the assessment relates to an overpayment: the time when the overpayment was made
Alcoholic Liquor Duties Act 1979	8 or 10	the time of delivery from warehouse
	11	the time when the direction was made
	36G	the time at which the requirement to pay the duty took effect (where an excise duty point for the beer is fixed under section 1 of the Finance (No 2) Act 1992, the time is that excise duty point)
Hydrocarbon Oil Duties Act 1979	10, 13, 13AB, 14 or 23	the time of the action which gave rise to the power to assess

	24(4A) or 4(B)	the time when the rebate was allowed or the oil was delivered without payment of duty (as the case may be)
Tobacco Products Duty Act 1979	8	the time when the Commissioners are satisfied of a failure to prove as mentioned in subsection 2(a) or (b) of that section
Finance (No 2) Act 1992	2 (as from a day to be appointed)	the time when the sums were paid or credited in respect of the drawback
Finance Act 1994	12A(2)	the time when the relevant excise duty relief in question was given

30. Completion of Forms EX 601 and EX 601A

30.1 When to use these forms

You should use Form EX 601 and, where necessary, its continuation sheet (Form EX 601A) to notify:

- any excise assessment, as explained in section 18;
- any assessment to an excise civil penalty; and
- an assessment to both duty and penalty.

This section explains how to complete both forms.

You **must** follow the mandatory control procedure set out at section 31. That section also explains where to send the various copies of the forms.

30.2 Completing Form EX 601 (Officer's assessment/civil penalty)

30.2.1 General notes on completion

The EX 601 consists of a four-part set of self-carbonising A4 sheets.

You must ensure that your writing is legible on all copies. Complete the form using a black ballpoint pen. Rest it on a hard surface and maintain a constant firm pressure whilst writing.

You should:

- line out any unused boxes or lines;
- enter whole pounds in the "due to" and "due from" columns;
- enter "due to" and "due from" amounts on separate lines;
- ensure underdeclarations are rounded down and overdeclarations are rounded up; and
- always record either an "assessment code" or a "penalty code" for each line.

30.2.2 Notifying assessments for amounts which are not excise duty

When notifying an excise assessment for an amount which is not excise duty (see sections 5-9), you should amend the statement on the form which begins "The Commissioners of Customs and Excise …" as follows:

- after the word "amounts", delete "of excise duty" and replace with the words "specified below"; and

- delete the sentence “Payment of any assessment to duty is due under Section 116 of the Customs and Excise Management Act 1979”. (Section 116 of CEMA is only concerned with the payment of excise duty.)

30.2.3 Assessment reference number

Section 31 explains the mandatory requirement to obtain an Assessment Reference Number (ARN) for any assessment or penalty that you notify on Form EX 601.

Record the ARN issued to you by the accounting centre in the top right hand corner of the form, ensuring it appears on all copies. Do not enter the ARN in the Unique Reference Number box.

30.2.4 Name and address

In the blank box at the top left of the form, insert the name and address of the person who is the subject of the assessment or penalty. Where the person is registered with the Department (or approved, authorised etc), make sure that you insert the correct registration details. Where the person is a private individual, insert their name and home address.

30.2.5 Keying operator’s stamp

The box at the top right of the form (marked ‘office use only’) should be stamped, following computer input, by the person who keys the document into the particular excise accounting system.

30.2.6 Unique Reference Number

If the person is registered with the Department insert the registration number in this box.

30.2.7 Vehicle Registration

No longer used. Please rule through the box.

30.2.8 Regime Indicator

In this box you should enter the EOPS code that covers the type of work you were doing when you discovered the need for an assessment/penalty. This will facilitate the collation of statistics. The codes are listed at section 33.

30.2.9 Details of assessment/penalty

Line	This will allow for easier identification of liabilities, either in general discussion or under the dispute procedures. If you make an error in completing a line on the form, you should cross through the incorrect line and re-number all subsequent lines.

Period / default dates	You must record here the dates on which the assessments or liability to a penalty started and finished. This may result in single-line assessments or penalties covering periods ranging from one day to possibly several years. If the assessment or penalty covers only one day, record the same date in both start and end boxes. Whatever the circumstances, you **must** record a date in both boxes. You should also ensure that the start date on assessment lines does not exceed the applicable assessment time limit(s). When dealing with authorised traders on fixed accounting periods you should allocate assessments and penalties to the return period in which the liability arose, showing the start and end date for each period. However, if you are unable to allocate duty underdeclarations to specific periods, or you have difficulty in doing so, you may record the assessment as a single-line bulk assessment. Where you have split the liability to periods, record each period liability on a separate line. Enter assessments in chronological order, with the oldest liability on line 1. You should also enter penalties in chronological order.
Assessment / penalty	Record here the net liability due to or from HM Revenue & Customs. You must use a separate line for each period if you are allocating the liability to different periods, and for each different type of penalty in each period. For example, if you are notifying an assessment for a net underdeclaration covering several months, together with a 5% geared penalty and a daily penalty in the same period, you will need to use three separate lines: one for the underdeclaration and one each for the two different penalties. You must record underdeclarations and overdeclarations on separate lines. You cannot record both an amount “due to” and an amount “due from” HM Revenue & Customs on the same line.
Attribution (A)	You must differentiate between assessment liabilities and penalties. Enter “A” for assessments and “P” for penalties.
Assessment code	In order to provide the trader and the Department with additional information concerning the excise duty assessed, you must indicate in this section the method (M) that you used to arrive at the assessed liability and the reason (R) for it, using the codes shown on the EX 603. If there is no assessment to duty, you should rule through these boxes.
Penalty	When you issue a civil penalty, you must record what type of

code	penalty it is in the box marked “P”, in accordance with the codes on the EX 603. If you use penalty codes 2 and 4, you should note in the box marked “%/D” the percentage applied to the duty amount to arrive at the penalty. If you apply a daily penalty, you should record in this box the number of days that the penalty applied for. If you are not applying a penalty, you should rule through this box.
Account code	To ensure that assessments and penalties are correctly accounted for, you must record here the HM Revenue & Customs Core Accounting System (CECAS) code that most closely corresponds to the reason for the assessment or penalty. Select the appropriate code from the CECAS account code list Assessments The CECAS code is split into two identifiers: • Account Source (S) The first two digits identify whether the duty related to ex-warehouse receipts, ex-ship receipts etc (see list below); and • Tax type (T) The last three digits represent the tax type, eg ‘cider and perry’, ‘gas oil’. Where possible, you should allocate the assessed debt to the different account sources and tax types, recording each different type on a separate line. However, if such allocation involves you in overly complex or time-consuming calculations, record the assessment against the account code which represents the greatest part of the assessment. The account source identifiers relevant to excise assessments are: • Ex-warehouse receipts – 31 • Ex-ship receipts – 32 • Other receipts – 33 • Ex-warehouse receipts collected by direct debit – 41 • Ex-ship receipts collected by direct debit – 42 • Other receipts collected by direct debit – 43 • Revenue repayments – 53 • Drawback – 63 Penalties You must ensure that you code the penalty, of whatever type, to the appropriate regime-specific CECAS code. All excise civil penalties are coded under account source 20, with the relevant tax types beginning with an 8 or a 9. (For example, the account code for a fixed civil penalty relating to alcohol is 20967.)

Totals	(Two boxes immediately below line 8.) You must record here the totals of lines 1 to 8, which give the amounts due to or from C&E. Do not include in these boxes any totals from EX 601A continuation sheets.

30.2.10 Net amount due to/from C&E

In this box, record the total net liability. That is, the total amount due to C&E minus the total amount due from C&E. Include in the calculation any amounts recorded on EX 601A continuation sheets. Make sure that you delete “to” or “from” to indicate whether the total net liability is an amount due to C&E or from C&E.

30.2.11 Issuing Officer

Insert your surname in this box. Include your title and initials if you wish, but leave a space (1 box) after each item.

Sign underneath and record your pay banding in the space marked ‘grade’.

30.2.12 Date stamp

You must stamp this box to show the date the form is sent to the person.

Note: As the notification date is the date we use for assessment time limit purposes, when you stamp the form you should check that the start date for each assessment or penalty line is still within time – see paragraphs 11.2 and 12.3.

30.2.13 Second signature

The checking officer or the authorising officer, whichever is appropriate, should sign and date the form.

30.2.14 Page.... of ....

To be completed on both the EX 601 and any EX 601A to ensure that no pages are missed when the assessment is keyed into the accounting system.

30.2.15 Remittance copy (EX 601(2))

Once you have completed the payment copy of the form (EX 601(1)), you should complete the accounting centre details on the remittance copy.

The centre portion of the remittance copy is not self-carbonising. Before writing on this portion, make sure that you turn copies 3 and 4 out of the way so that the details you enter on copy 2 do not overwrite the existing assessment and/or penalty details on those copies.

Indicate the accounting centre the person should send (the remittance copy and) their payment to by:

- ticking the appropriate box if the correct address already appears on the form; or
- ticking ‘other’ and inserting the appropriate accounting centre details.

Only request payment to the accounting centre that issued you with your Assessment Reference Number.

30.3 Completing Form EX 601A (Officer’s assessment/civil penalty)(Continuation)

The EX 601A continuation sheet is basically the same form as the EX 601 but has only three sheets, omitting the remittance advice. You will need to complete it if your assessments and penalties total more than 8 lines.

The form is part of the EX 601 and is simply a way of recording multi-line liabilities without time-consuming repetition of details such as the name and address.

Complete the items on the form in accordance with the above guidance on completing the EX 601.

Carry forward the totals from all continuation sheets to the “net amount due to/from C&E” box on the EX 601. If the notification comprises a number of sheets, it may help to detail the carried forward figures on an accompanying schedule.

31. Form EX 601: management control procedure

31.1 Mandatory control procedure for all EX 601s

Any assessing officer notifying an assessment on Form EX 601 **must** follow the management control procedure set out in this section. It applies to **all** revenue or penalty assessments notified on Form EX 601.

31.2 Background to the procedure

In the late 1990s Internal Audit Division carried out a number of reviews and system audits in the area of assessments and debt management. They identified procedural weaknesses in the EX 601 system and a lack of control of excise debts. The IAD recommended:

- reminding all staff of the importance of reporting promptly **all** excise debts at the time of assessment; and
- implementing a system that would provide an audit trail record of all EX 601 assessments made, **together with an effective management control system**.

They also stressed the importance of making assessments for errors identified on a visit, rather than requesting adjustment by the trader on the next return.

The management control procedure set out in this section was introduced with effect from 1 July 2001 and provides the control system and EX 601 audit trail record recommended by the IAD.

This manual procedure remains in operation pending the planned introduction of an automated accounting system that will ensure immediate posting of assessments to the trader's account (where the assessed person is registered) and prompt debt recovery action when necessary. Debt recovery action is reliant on the assessing officer sending the accounting copy of the EX 601 to the accounting centre, for onward notification to the debt management unit.

31.3 Monitoring payment and notifying debts

The introduction of this procedure removed the requirement in the 'Whole Trader Debt Management - Non-VAT Regimes Debt Management Guide' for excise assessing officers to monitor receipt of payment and notify any recoverable debt to the DMU. This is now the responsibility of the accounting centre.

31.4 Detail of the procedure

31.4.1 Action to be taken by assessing officer when notifying assessments

Step	Action which must be taken by assessing officer
1	Before notifying the assessment (including prime assessments), the assessing officer **must** telephone the relevant accounting centre responsible for the revenue assessments specified in the contact list at paragraph 31.5. The accounting centre will advise a unique local Assessment Reference Number (ARN).
2	Upon being advised of the ARN by telephone, the assessing officer **must**: • immediately record the allocated ARN in the top right hand corner of all copies of Form EX 601 - eg 'ARN GR 15/04'; • otherwise complete the form in accordance with the guidance in section 30; and • have the completed form checked and authorised as appropriate.
3	The assessing officer must then notify the assessment by sending to the trader: • the top and second (remittance) copies of the EX 601*; • an explanatory letter clearly stating the basis of the assessment (see paragraph 18.6); • any schedule; and • a copy of Form EX 603 Explanatory Notes. The assessing officer must then: • **immediately** send the third (accounting) copy of the EX 601 to the relevant accounting centre. The fourth copy of the EX 601 should be retained in the trader's file. (This copy will be needed if in the event of any queries, requests for departmental review or appeals to Tribunal.) * Batch each copy of any EX 601A continuation sheet that forms part of the assessment with its counterpart from the EX 601 and dispose of each set as a single item. The top copy of Form EX 601A is for the trader, the second copy is the keying (accounting) copy and the third copy is to be retained in the trader's file. Note the ARN on each copy of the EX 601A.

31.4.2 Action to be taken by assessing officer when request for review/appeal is received or assessment withdrawn/amended

The assessing officer must notify the relevant accounting centre immediately where a request for review/appeal is received or the assessment is withdrawn or amended.

31.4.3 Accounting centre action when notified by assessing officer of revenue or penalty assessment

Step	Action which must be taken by accounting centre
1	Issue the ARN to the assessing officer. The accounting centre should request and record: • the trader's name and registration number; • the amount and type of revenue to be assessed; and • the assessing officer's name, telephone number and e-mail address. The accounting centre must keep a list of ARNs issued. The format of the ARN should be the accounting centre initials followed by the sequential number and the year - eg GR 01/01, GR 02/01 etc, for assessments processed by Greenock accounting centre.
2	Contact the assessing officer if the relevant accounting copy of Form EX 601 has not been received within 10 calendar days of the issue of the ARN

31.4.4 Accounting centre action when EX 601 received without any recorded ARN

Should an EX 601 be received without any recorded ARN, one should be allocated upon receipt. The accounting centre should:

- advise the assessing officer to note the ARN on the fourth (file) copy of the EX 601; and
- remind them about the need to obtain an ARN prior to notifying the assessment.
  Persistent lapses from this procedure should be advised to the assessing officer's manager.

Note: ARN records kept by accounting centres must provide a full audit trail control record of **all** assessments notified.

31.4.5 Accounting centre action when advised of a request for review/appeal or of withdrawal/amendment of assessment

For debts already reported by the accounting centre to the DMU, **the accounting centre** is to notify the DMU immediately where a request for review/appeal is advised or the assessment is advised as withdrawn or amended.

31.4.6 Accounting centre action where debt remains unpaid

Accounting centres may continue to issue reminders or notify unpaid debts to the DMU in accordance with local practice.

Recovery of the excise debt cannot commence until the statutory 45 day assessment review period has expired. The DMU must be advised **immediately** if the debt remains unpaid 45 calendar days after the assessment.

31.4.7 DMU action when payments received or time to pay agreements made

The DMU is to advise the accounting centre of payments received and time to pay agreements.

31.5 Accounting centres which process EX 601 assessments

Where the EX 601 assessment relates to a regime/duty for which a **national** accounting centre is listed below, the assessing officer should obtain the Assessment Reference Number from that national accounting centre.

In all other cases, the assessing officer should obtain the ARN from their **regional** accounting centre (also listed below).

REVENUE/PENALTY TO BE ASSESSED	**ACCOUNTING CENTRE**
Amusement Machine Licence Duty Bingo Duty Betting Duty Gaming Duty Lottery Duty Pool Betting Duty	HMRC Accounting Centre Custom House Custom House Quay Greenock Scotland PA15 1EQ Tel. 01475 881426 Fax. 01475 881445 VPN 8423 1426
Beer Duty and Beer Duty Penalties (ex Breweries) REDS (Registered Excise Dealers and Shippers) Occasional Importers	HMRC 1st Floor Accounts Queens Dock Liverpool L74 4AG Tel. 0151 703 1376 Fax. 0151 703 1384 VPN 8303 1376
TAPS – Wines and Made Wine and Cider (ex producers premises)	CCU 8th Floor SC Alexander House 21 Victoria Avenue Southend-on-Sea Essex SS99 1AA Tel. 01702 366558 Fax. 01702 366562 VPN 8166 6558

Oil Duties (Assessments and penalties relating to HO10 warrants only)	CDO 10th Floor SE Alexander House 21 Victoria Avenue Southend-on-Sea Essex SS99 1AA Tel. 01702 367444 Fax. 01702 366091 VPN 8166 7444
Tobacco Duties	HMRC 3rd Floor Accounts Two Broadway Broad Street Birmingham B15 1BG Tel. 0121 697 4217 / 4189 Fax. 0121 697 4290 VPN 8233 4217 / 4189

ALL OTHER EX 601 ASSESSMENTS ISSUED BY …	**ACCOUNTING CENTRE**
Central Region Wales Region	HMRC 3rd Floor Accounts Two Broadway Broad Street Birmingham B15 1BG Tel. 0121 697 4217 / 4189 Fax. 0121 697 4290 VPN 8233 4217 / 4189
Heathrow, Gatwick, Luton, Stansted, Mount Pleasant and City Airport	HMRC Custom House Nettleton Road Heathrow Airport Hounslow Middlesex TW6 2LA Tel. 0208 910 3832
North Region Northern Ireland Region Scotland Region	HMRC 1st Floor Accounts Queens Dock Liverpool L74 4AG Tel. 0151 703 1376 Fax. 0151 703 1384 VPN 8303 1376

South Region and Stratford (East London Business Centre), Croydon, Dorset House and Thomas Paine House	HMRC Ground Floor East Compass House Ordance Survey Site Romsey Road Maybush Southampton SO16 4HP Tel. 02380 79 7509 Fax. 02380 79 7555 VPN 8200 7509

32. Countersignatory limit table

Form	Band 5/6	Band 7/8	Band 9/10	Band 11/12
EX 601 Overdeclarations	Up to £2,000	Up to £5,000	Up to £20,000	No limit
EX 602 Assessment reductions and withdrawals	Nil	Up to £5,000	Up to £20,000	No limit

NOTES

1 The limits for forms EX 601 and 602 are the net total on the form, not by line or sub total.

2 If the assessing officer is at Band 9/10 or above, authorisation for EX 602 should be at the appropriate line management banding.

3 When raising an EX 601 or 602 for an overdeclaration, reduction or withdrawal, the assessing officer cannot also countersign the document (even if it is within their limit as described above). An independent countersignature is required.

33. Excise Regime Codes

One of the following codes should be entered in the 'regime indicator' box on the EX 601 to identify the work area that gave rise to the assessment or civil penalty. See paragraph 30.2.8.

Main code / regime	Sub code and regime
110 Distilleries	111 Distilleries 112 EVO (Alcohol)
120 Breweries	120 Breweries 122 EVO (Breweries)
130 Betting & Gaming	131 General Betting Duty 132 Bingo Duty 133 Gaming Machine Licence Duty 134 Gaming Licence Duty 135 Pool Betting 136 National Lottery 139 Other Betting and Gaming
140 Tobacco	141 Tobacco 142 EVO (Tobacco)
150 HCO relief	151 Bonded User 152 Repayment User 153 Bonded Distributor 154 HCO Drawback 155 EVO (Oils) 159 Other HCO Relief
160 RFTU	161 RFTU 162 EVO (RFTU)

170 Other Revenue Traders	171 IMS / DEB 172 Duty free spirits 173 Wine / Made Wine 174 Cider / Perry makers 175 Air Passenger Duty 176 REDS (Principals, Agents, Fisc.Reps) 177 REDS (Importers using agents) 178 EVO Other 179 Other Revenue Trader Work
220 C&E Warehousing	221 C&E Warehousing
230 Oils Warehousing	231 Refineries 232 Bonded Warehouses 233 Producers 234 Remote Marking Premises 235 Central Accounting Point 239 Other Oils Warehousing