

*Status: Point in time view as at 16/11/2017.*

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## SCHEDULES

### SCHEDULE 36

Section 113

#### INFORMATION AND INSPECTION POWERS

##### Modifications etc. (not altering text)

- C1 Sch. 36 applied (with modifications) (E.W.) (6.4.2009) by [The Education \(Student Loans\) \(Repayment\) Regulations 2009 \(S.I. 2009/470\)](#), regs. 1(1), **60(1)(2)** (with reg. 1(4)(6))
- C2 Sch. 36 applied (with modifications) (N.I.) (6.4.2009) by [The Education \(Student Loans\) \(Repayment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/128\)](#), regs. 1(1), **28(2)(3)**
- C3 Sch. 36 applied (with modifications) (N.I.) (6.4.2009) by [The Education \(Student Loans\) \(Repayment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/128\)](#), regs. 1(1), **56**
- C4 Sch. 36 applied (with modifications) (E.W.) (6.4.2009) by [The Education \(Student Loans\) \(Repayment\) Regulations 2009 \(S.I. 2009/470\)](#), regs. 1(1), **33(2)(3)** (with reg. 1(4)(6))
- C5 Sch. 36 applied (with modifications) (N.I.) (6.4.2009) by [The Education \(Student Loans\) \(Repayment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/128\)](#), regs. 1(1), **55(1)(2)**
- C6 Sch. 36 applied (with modifications) (E.W.) (6.4.2009) by [The Education \(Student Loans\) \(Repayment\) Regulations 2009 \(S.I. 2009/470\)](#), regs. 1(1), **61** (with reg. 1(4)(6))
- C7 Sch. 36 modified (8.4.2010) by [Finance Act 2010 \(c. 13\)](#), **Sch. 1 para. 36(1)**
- C8 Sch. 36 modified (22.3.2011) by [National Insurance Contributions Act 2011 \(c. 3\)](#), **ss. 9(5)**, 13(2)
- C9 Sch. 36 applied (with modifications) (19.4.2013) by [The Small Charitable Donations Regulations 2013 \(S.I. 2013/938\)](#), regs. 1, **5**
- C10 Sch. 36 applied (19.4.2013) by [The Small Charitable Donations Regulations 2013 \(S.I. 2013/938\)](#), regs. 1, **5(1)**
- C11 Sch. 36 applied (with modifications) (with application in accordance with reg. 1 of the amending S.I.) by [The Education \(Postgraduate Master's Degree Loans\) Regulations 2016 \(S.I. 2016/606\)](#), regs. 1(1), **78(1)(2)**
- C12 Sch. 36 applied (with modifications) (with application in accordance with reg. 1 of the amending S.I.) by [The Education \(Postgraduate Master's Degree Loans\) Regulations 2016 \(S.I. 2016/606\)](#), regs. 1(1), **77(1)(2)**
- C13 Sch. 36 applied (with modifications) (with application in accordance with reg. 1 of the amending S.I.) by [The Education \(Postgraduate Master's Degree Loans\) Regulations 2016 \(S.I. 2016/606\)](#), regs. 1(1), **43(2)(3)**
- C14 Sch. 36 applied (with modifications) (1.1.2017) by [Finance Act 2016 \(c. 24\)](#), s. 162(2), **Sch. 20 paras. 18-21**; S.I. 2016/1249, reg. 2
- C15 Sch. 36 applied (with modifications) (with effect in accordance with Sch. 16 para. 62 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), **Sch. 16 paras. 40-43**

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## PART 1

### POWERS TO OBTAIN INFORMATION AND DOCUMENTS

#### *Power to obtain information and documents from taxpayer*

- 1 (1) An officer of Revenue and Customs may by notice in writing require a person (“the taxpayer”)—
- (a) to provide information, or
  - (b) to produce a document,
- if the information or document is reasonably required by the officer for the purpose of checking the taxpayer's tax position.
- (2) In this Schedule, “taxpayer notice” means a notice under this paragraph.

#### Commencement Information

**II** Sch. 36 para. 1 in force at 1.4.2009 by [S.I. 2009/404](#), **art. 2**

#### *Power to obtain information and documents from third party*

- 2 (1) An officer of Revenue and Customs may by notice in writing require a person—
- (a) to provide information, or
  - (b) to produce a document,
- if the information or document is reasonably required by the officer for the purpose of checking the tax position of another person whose identity is known to the officer (“the taxpayer”).
- (2) A third party notice must name the taxpayer to whom it relates, unless the [<sup>F1</sup>tribunal] has approved the giving of the notice and disapplied this requirement under paragraph 3.
- (3) In this Schedule, “third party notice” means a notice under this paragraph.

#### Textual Amendments

**F1** Word in Sch. 36 para. 2(2) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 471(2)**

#### Commencement Information

**I2** Sch. 36 para. 2 in force at 1.4.2009 by [S.I. 2009/404](#), **art. 2**

#### *Approval etc of taxpayer notices and third party notices*

- 3 (1) An officer of Revenue and Customs may not give a third party notice without—
- (a) the agreement of the taxpayer, or
  - (b) the approval of the [<sup>F2</sup>tribunal] .

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- (2) An officer of Revenue and Customs may ask for the approval of the [F<sup>3</sup>tribunal] to the giving of any taxpayer notice or third party notice (and for the effect of obtaining such approval see paragraphs 29, 30 and 53 (appeals against notices and offence)).
- [F<sup>4</sup>(2A) An application for approval under this paragraph may be made without notice (except as required under sub-paragraph (3)).]
- (3) The [F<sup>5</sup>tribunal] may not approve the giving of a taxpayer notice or third party notice unless—
- (a) an application for approval is made by, or with the agreement of, an authorised officer of Revenue and Customs,
  - (b) the [F<sup>6</sup>tribunal] is satisfied that, in the circumstances, the officer giving the notice is justified in doing so,
  - (c) the person to whom the notice is [F<sup>7</sup>to be] addressed has been told that the information or documents referred to in the notice are required and given a reasonable opportunity to make representations to an officer of Revenue and Customs,
  - (d) the [F<sup>5</sup>tribunal] has been given a summary of any representations made by that person, and
  - (e) in the case of a third party notice, the taxpayer has been given a summary of the reasons why an officer of Revenue and Customs requires the information and documents.
- (4) Paragraphs (c) to (e) of sub-paragraph (3) do not apply to the extent that the [F<sup>8</sup>tribunal] is satisfied that taking the action specified in those paragraphs might prejudice the assessment or collection of tax.
- (5) Where the [F<sup>9</sup>tribunal] approves the giving of a third party notice under this paragraph, it may also disapply the requirement to name the taxpayer in the notice if it is satisfied that the officer has reasonable grounds for believing that naming the taxpayer might seriously prejudice the assessment or collection of tax.

#### Textual Amendments

- F2** Word in Sch. 36 para. 3(1)(b) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 471(3)(a)**
- F3** Word in Sch. 36 para. 3(2) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 471(3)(b)**
- F4** Sch. 36 para. 3(2A) inserted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), **Sch. 47 para. 2(2)**
- F5** Word in Sch. 36 para. 3(3) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 471(3)(c)(i)**
- F6** Word in Sch. 36 para. 3(3)(b) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 471(3)(c)(ii)**
- F7** Word in Sch. 36 para. 3(3)(c) inserted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), **Sch. 47 para. 2(3)**
- F8** Word in Sch. 36 para. 3(4) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 471(3)(d)**
- F9** Word in Sch. 36 para. 3(5) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 471(3)(e)**

#### Commencement Information

- I3** Sch. 36 para. 3 in force at 1.4.2009 by [S.I. 2009/404](#), **art. 2**

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*Copying third party notice to taxpayer*

- 4 (1) An officer of Revenue and Customs who gives a third party notice must give a copy of the notice to the taxpayer to whom it relates, unless the [<sup>F10</sup>tribunal] has disapplied this requirement.
- (2) The [<sup>F11</sup>tribunal] may not disapply that requirement unless—
- (a) an application for approval is made by, or with the agreement of, an authorised officer of Revenue and Customs, and
  - (b) the [<sup>F12</sup>tribunal] is satisfied that the officer has reasonable grounds for believing that giving a copy of the notice to the taxpayer might prejudice the assessment or collection of tax.

**Textual Amendments**

- F10** Word in Sch. 36 para. 4(1) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 471(4)(a)**
- F11** Word in Sch. 36 para. 4(2) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 471(4)(b)(i)**
- F12** Word in Sch. 36 para. 4(2)(b) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 471(4)(b)(ii)**

**Commencement Information**

- I4** Sch. 36 para. 4 in force at 1.4.2009 by [S.I. 2009/404](#), **art. 2**

*Power to obtain information and documents about persons whose identity is not known*

- 5 (1) An authorised officer of Revenue and Customs may by notice in writing require a person—
- (a) to provide information, or
  - (b) to produce a document,
- if the condition in sub-paragraph (2) is met.
- (2) That condition is that the information or document is reasonably required by the officer for the purpose of checking the <sup>F13</sup>... tax position of—
- (a) a person whose identity is not known to the officer, or
  - (b) a class of persons whose individual identities are not known to the officer.
- (3) An officer of Revenue and Customs may not give a notice under this paragraph without the approval of the [<sup>F14</sup>tribunal] .
- [<sup>F15</sup>(3A) An application for approval under this paragraph may be made without notice.]
- (4) The [<sup>F16</sup>tribunal] may not [<sup>F17</sup>approve the giving of a notice under] this paragraph unless it is satisfied that—
- (a) the notice would meet the condition in sub-paragraph (2),
  - (b) there are reasonable grounds for believing that the person or any of the class of persons to whom the notice relates may have failed or may fail to comply with any provision of [<sup>F18</sup>the law (including the law of a territory outside the United Kingdom) relating to tax],

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- (c) any such failure is likely to have led or to lead to serious prejudice to the assessment or collection of <sup>F19</sup>... tax, and
- (d) the information or document to which the notice relates is not readily available from another source.

<sup>F20</sup>(5) .....

#### Textual Amendments

- F13** Word in [Sch. 36 para. 5\(2\)](#) omitted (1.4.2012 with application in accordance with [Sch. 24 para. 2\(5\)\(b\)](#)) by virtue of [Finance Act 2011 \(c. 11\)](#), [Sch. 24 para. 2\(2\)\(5\)\(a\)](#)
- F14** Word in [Sch. 36 para. 5\(3\)](#) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 1 para. 471\(2\)](#)
- F15** [Sch. 36 para. 5\(3A\)](#) inserted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 47 para. 3\(2\)](#)
- F16** Word in [Sch. 36 para. 5\(4\)](#) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 1 para. 471\(2\)](#)
- F17** Words in [Sch. 36 para. 5\(4\)](#) substituted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 47 para. 3\(3\)](#)
- F18** Words in [Sch. 36 para. 5\(4\)\(b\)](#) substituted (1.4.2012 with application in accordance with [Sch. 24 para. 2\(5\)\(b\)](#)) by [Finance Act 2011 \(c. 11\)](#), [Sch. 24 para. 2\(3\)\(a\)\(5\)\(a\)](#)
- F19** Word in [Sch. 36 para. 5\(4\)\(c\)](#) omitted (1.4.2012 with application in accordance with [Sch. 24 para. 2\(5\)\(b\)](#)) by virtue of [Finance Act 2011 \(c. 11\)](#), [Sch. 24 para. 2\(3\)\(b\)\(5\)\(a\)](#)
- F20** [Sch. 36 para. 5\(5\)](#) omitted (1.4.2012 with application in accordance with [Sch. 24 para. 2\(5\)\(b\)](#)) by virtue of [Finance Act 2011 \(c. 11\)](#), [Sch. 24 para. 2\(4\)\(5\)\(a\)](#)

#### Commencement Information

- I5** [Sch. 36 para. 5](#) in force at 1.4.2009 by [S.I. 2009/404](#), [art. 2](#)

<sup>F21</sup>*Power to obtain information about persons whose identity can be ascertained*

#### Textual Amendments

- F21** [Sch. 36 para. 5A](#) and cross-heading inserted (with effect in accordance with s. 224(7) of the amending Act) by [Finance Act 2012 \(c. 14\)](#), [s. 224\(2\)](#)

- 5A (1) An authorised officer of Revenue and Customs may by notice in writing require a person to provide relevant information about another person (“the taxpayer”) if conditions A to D are met.
- (2) Condition A is that the information is reasonably required by the officer for the purpose of checking the tax position of the taxpayer.
- (3) Condition B is that—
  - (a) the taxpayer's identity is not known to the officer, but
  - (b) the officer holds information from which the taxpayer's identity can be ascertained.
- (4) Condition C is that the officer has reason to believe that—
  - (a) the person will be able to ascertain the taxpayer's identity from the information held by the officer, and
  - (b) the person obtained relevant information about the taxpayer in the course of carrying on a business.

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- (5) Condition D is that the taxpayer's identity cannot readily be ascertained by other means from the information held by the officer.
- (6) “Relevant information” means all or any of the following—
- (a) name,
  - (b) last known address, and
  - (c) date of birth (in the case of an individual).
- (7) This paragraph applies for the purpose of checking the tax position of a class of persons as for the purpose of checking the tax position of a single person (and references to “the taxpayer” are to be read accordingly).]

#### Notices

- 6 (1) In this Schedule, “information notice” means a notice under paragraph 1, 2 [<sup>F22</sup>, 5 or 5A].
- (2) An information notice may specify or describe the information or documents to be provided or produced.
- (3) If an information notice is given with the approval of the [<sup>F23</sup>tribunal], it must state that it is given with that approval.
- [<sup>F24</sup>(4) A decision of the tribunal under paragraph 3, 4 or 5 is final (despite the provisions of sections 11 and 13 of the Tribunals, Courts and Enforcement Act 2007).]

#### Textual Amendments

- F22** Words in Sch. 36 para. 6(1) substituted (with effect in accordance with s. 224(7) of the amending Act) by Finance Act 2012 (c. 14), s. 224(3)
- F23** Word in Sch. 36 para. 6(3) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), Sch. 1 para. 471(2)
- F24** Sch. 36 para. 6(4) inserted (21.7.2009) by Finance Act 2009 (c. 10), Sch. 47 para. 4

#### Modifications etc. (not altering text)

- C16** Sch. 36 para. 6(2) applied (20.3.2014) (with effect in accordance with Sch. 7 para. 5(1) of the amending Act) by 2004 c. 12, s. 153A(3) (as inserted by Finance Act 2014 (c. 26), Sch. 7 paras. 3, 5(1))
- C17** Sch. 36 para. 6(2) applied (with effect in accordance with Sch. 7 para. 8(1) of the amending Act) by 2004 c. 12, s. 159A(2) (as inserted by Finance Act 2014 (c. 26), Sch. 7 paras. 7, 8(3))
- C18** Sch. 36 para. 6(2) applied (17.1.2017) by Savings (Government Contributions) Act 2017 (c. 2), s. 6(2)(3), Sch. 1 para. 6(3)
- C19** Sch. 36 para. 6(2) applied (17.1.2017) by Savings (Government Contributions) Act 2017 (c. 2), s. 6(2)(3), Sch. 2 para. 19(2)
- C20** Sch. 36 para. 6(2) applied (17.1.2017) by Savings (Government Contributions) Act 2017 (c. 2), s. 6(2)(3), Sch. 1 para. 10(4)

#### Commencement Information

- I6** Sch. 36 para. 6 in force at 1.4.2009 by S.I. 2009/404, art. 2

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### *Complying with notices*

- 7 (1) Where a person is required by an information notice to provide information or produce a document, the person must do so—
- (a) within such period, and
  - (b) at such time, by such means and in such form (if any),
- as is reasonably specified or described in the notice.
- (2) Where an information notice requires a person to produce a document, it must be produced for inspection—
- (a) at a place agreed to by that person and an officer of Revenue and Customs, or
  - (b) at such place as an officer of Revenue and Customs may reasonably specify.
- (3) An officer of Revenue and Customs must not specify a place that is used solely as a dwelling.
- (4) The production of a document in compliance with an information notice is not to be regarded as breaking any lien claimed on the document.

#### **Modifications etc. (not altering text)**

- C21** Sch. 36 para. 7 applied (20.3.2014) (with effect in accordance with Sch. 7 para. 5(1) of the amending Act) by 2004 c. 12, s. 153A(3) (as inserted by Finance Act 2014 (c. 26), Sch. 7 paras. 3, 5(1))
- C22** Sch. 36 para. 7 applied (with effect in accordance with Sch. 7 para. 8(1) of the amending Act) by 2004 c. 12, s. 159A(2) (as inserted by Finance Act 2014 (c. 26), Sch. 7 paras. 7, 8(3))
- C23** Sch. 36 para. 7 applied (17.1.2017) by Savings (Government Contributions) Act 2017 (c. 2), s. 6(2)(3), Sch. 1 para. 10(4)
- C24** Sch. 36 para. 7 applied (17.1.2017) by Savings (Government Contributions) Act 2017 (c. 2), s. 6(2)(3), Sch. 1 para. 6(3)
- C25** Sch. 36 para. 7 applied (17.1.2017) by Savings (Government Contributions) Act 2017 (c. 2), s. 6(2)(3), Sch. 2 para. 19(2)
- C26** Sch. 36 para. 7 applied (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by 2010 c. 8, Sch. 7A para. 66(1) (as inserted by Finance (No. 2) Act 2017 (c. 32), Sch. 5 para. 2 (with Sch. 5 para. 28))

#### **Commencement Information**

- I7** Sch. 36 para. 7 in force at 1.4.2009 by S.I. 2009/404, art. 2

### *Producing copies of documents*

- 8 (1) Where an information notice requires a person to produce a document, the person may comply with the notice by producing a copy of the document, subject to any conditions or exceptions set out in regulations made by the Commissioners.
- (2) Sub-paragraph (1) does not apply where—
- (a) the notice requires the person to produce the original document, or
  - (b) an officer of Revenue and Customs subsequently makes a request in writing to the person for the original document.
- (3) Where an officer of Revenue and Customs requests a document under sub-paragraph (2)(b), the person to whom the request is made must produce the document—
- (a) within such period, and

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(b) at such time and by such means (if any),  
as is reasonably requested by the officer.

**Modifications etc. (not altering text)**

- C27** Sch. 36 para. 8 applied (20.3.2014) (with effect in accordance with Sch. 7 para. 5(1) of the amending Act) by 2004 c. 12, s. 153A(3) (as inserted by Finance Act 2014 (c. 26), Sch. 7 paras. 3, 5(1))
- C28** Sch. 36 para. 8 applied (with effect in accordance with Sch. 7 para. 8(1) of the amending Act) by 2004 c. 12, s. 159A(2) (as inserted by Finance Act 2014 (c. 26), Sch. 7 paras. 7, 8(3))
- C29** Sch. 36 para. 8 applied (17.1.2017) by Savings (Government Contributions) Act 2017 (c. 2), s. 6(2)(3), Sch. 2 para. 19(2)
- C30** Sch. 36 para. 8 applied (17.1.2017) by Savings (Government Contributions) Act 2017 (c. 2), s. 6(2)(3), Sch. 1 para. 10(4)
- C31** Sch. 36 para. 8 applied (17.1.2017) by Savings (Government Contributions) Act 2017 (c. 2), s. 6(2)(3), Sch. 1 para. 6(3)
- C32** Sch. 36 para. 8 applied (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by 2010 c. 8, Sch. 7A para. 66(1) (as inserted by Finance (No. 2) Act 2017 (c. 32), Sch. 5 para. 2 (with Sch. 5 para. 28))

**Commencement Information**

- I8** Sch. 36 para. 8 in force at 1.4.2009 by S.I. 2009/404, art. 2

*Restrictions and special cases*

9 This Part of this Schedule has effect subject to Parts 4 and 6 of this Schedule.

**Commencement Information**

- I9** Sch. 36 para. 9 in force at 1.4.2009 by S.I. 2009/404, art. 2

**PART 2**

POWERS TO INSPECT [F<sup>25</sup>PREMISES AND OTHER PROPERTY]

**Textual Amendments**

- F25** Words in Sch. 36 Pt. 2 heading substituted (1.4.2010) by The Finance Act 2009, Section 96 and Schedule 48 (Appointed Day, Savings and Consequential Amendments) Order 2009 (S.I. 2009/3054), art. 1, Sch. para. 15

*Power to inspect business premises etc*

- 10 (1) An officer of Revenue and Customs may enter a person's business premises and inspect—
- (a) the premises,
  - (b) business assets that are on the premises, and
  - (c) business documents that are on the premises,



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if the inspection is reasonably required for the purpose of checking that person's tax position.

(2) The powers under this paragraph do not include power to enter or inspect any part of the premises that is used solely as a dwelling.

(3) In this Schedule—

“business assets” means assets that an officer of Revenue and Customs has reason to believe are owned, leased or used in connection with the carrying on of a business by any person [<sup>F26</sup>(but see sub-paragraph (4))],

“business documents” means documents (or copies of documents)—

(a) that relate to the carrying on of a business by any person, and

(b) that form part of any person's statutory records, and

“business premises”, in relation to a person, means premises (or any part of premises) that an officer of Revenue and Customs has reason to believe are (or is) used in connection with the carrying on of a business by or on behalf of the person.

[<sup>F27</sup>(4) For the purposes of this Schedule, “business assets” does not include documents, other than—

(a) documents that are trading stock for the purposes of Chapter 11A of Part 2 of ITTOIA 2005 (see section 172A of that Act), and

(b) documents that are plant for the purposes of Part 2 of CAA 2001.]

#### Textual Amendments

**F26** Words in Sch. 36 para. 10(3) substituted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 47 para. 5\(2\)](#)

**F27** Sch. 36 para. 10(4) inserted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 47 para. 5\(3\)](#)

#### Modifications etc. (not altering text)

**C33** Sch. 36 para. 10(2) applied (20.3.2014) (with effect in accordance with [Sch. 7 para. 5\(1\)](#) of the amending Act) by [2004 c. 12](#), [s. 153B\(4\)](#) (as inserted by [Finance Act 2014 \(c. 26\)](#), [Sch. 7 paras. 3, 5\(1\)](#))

**C34** Sch. 36 para. 10(2) applied (with effect in accordance with [Sch. 7 para. 8\(1\)](#) of the amending Act) by [2004 c. 12](#), [s. 159B\(3\)](#) (as inserted by [Finance Act 2014 \(c. 26\)](#), [Sch. 7 paras. 7, 8\(3\)](#))

#### Commencement Information

**I10** Sch. 36 para. 10 in force at 1.4.2009 by [S.I. 2009/404](#), [art. 2](#)

*[<sup>F28</sup>Power to inspect business premises etc of involved third parties*

#### Textual Amendments

**F28** [Sch. 36 para. 10A](#) and cross-heading inserted (1.4.2010) by [Finance Act 2009 \(c. 10\)](#), [s. 96\(3\)](#), [Sch. 48 para. 3](#); [S.I. 2009/3054](#), [art. 2](#)

10A (1) An officer of Revenue and Customs may enter business premises of an involved third party (see paragraph 61A) and inspect—

(a) the premises,

(b) business assets that are on the premises, and

(c) relevant documents that are on the premises,

*Status: Point in time view as at 16/11/2017.*

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if the inspection is reasonably required by the officer for the purpose of checking the position of any person or class of persons as regards a relevant tax.

- (2) The powers under this paragraph may be exercised whether or not the identity of that person is, or the individual identities of those persons are, known to the officer.
- (3) The powers under this paragraph do not include power to enter or inspect any part of the premises that is used solely as a dwelling.
- (4) In relation to an involved third party, “relevant documents” and “relevant tax” are defined in paragraph 61A.]

*Power to inspect premises used in connection with taxable supplies etc*

- 11 (1) This paragraph applies where an officer of Revenue and Customs has reason to believe that—
  - (a) premises are used in connection with the supply of goods under taxable supplies and goods to be so supplied [<sup>F29</sup>or documents relating to such goods] are on those premises,
  - (b) premises are used in connection with the acquisition of goods from other member States under taxable acquisitions and goods to be so acquired [<sup>F30</sup>or documents relating to such goods] are on those premises, or
  - (c) premises are used as [<sup>F31</sup>or in connection with] a fiscal warehouse.
- (2) An officer of Revenue and Customs may enter the premises and inspect—
  - (a) the premises,
  - (b) any goods that are on the premises, and
  - (c) any documents on the premises that appear to the officer to relate to [<sup>F32</sup>the supply of goods under taxable supplies, the acquisition of goods from other member States under taxable acquisitions or fiscal warehousing].
- (3) The powers under this paragraph do not include power to enter or inspect any part of the premises that is used solely as a dwelling.
- (4) Terms used both in [<sup>F33</sup>this paragraph] and in VATA 1994 have the same meaning [<sup>F34</sup>here] as they have in that Act.

**Textual Amendments**

- F29** Words in Sch. 36 para. 11(1)(a) inserted (21.7.2009) by Finance Act 2009 (c. 10), Sch. 47 para. 6(2)(a)
- F30** Words in Sch. 36 para. 11(1)(b) inserted (21.7.2009) by Finance Act 2009 (c. 10), Sch. 47 para. 6(2)(b)
- F31** Words in Sch. 36 para. 11(1)(c) inserted (21.7.2009) by Finance Act 2009 (c. 10), Sch. 47 para. 6(2)(c)
- F32** Words in Sch. 36 para. 11(2)(c) substituted (21.7.2009) by Finance Act 2009 (c. 10), Sch. 47 para. 6(3)
- F33** Words in Sch. 36 para. 11(4) substituted (21.7.2009) by Finance Act 2009 (c. 10), Sch. 47 para. 6(4)(a)
- F34** Word in Sch. 36 para. 11(4) substituted (21.7.2009) by Finance Act 2009 (c. 10), Sch. 47 para. 6(4)(b)

**Commencement Information**

- I11** Sch. 36 para. 11 in force at 1.4.2009 by S.I. 2009/404, art. 2

*Status: Point in time view as at 16/11/2017.*

*Changes to legislation: Finance Act 2008, SCHEDULE 36 is up to date with all changes known to be in force on or before 01 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### Carrying out inspections <sup>[F35]</sup> under paragraph 10, 10A or 11]

#### Textual Amendments

**F35** Words in Sch. 36 para. 12 cross-heading inserted (1.4.2010) by Finance Act 2009 (c. 10), s. 96(3), Sch. 48 para. 4(3); S.I. 2009/3054, art. 2

- 12 (1) An inspection under <sup>[F36]</sup> paragraph 10, 10A or 11] may be carried out only—
- (a) at a time agreed to by the occupier of the premises, or
  - (b) if sub-paragraph (2) is satisfied, at any reasonable time.
- (2) This sub-paragraph is satisfied if—
- (a) the occupier of the premises has been given at least 7 days' notice of the time of the inspection (whether in writing or otherwise), or
  - (b) the inspection is carried out by, or with the agreement of, an authorised officer of Revenue and Customs.
- (3) An officer of Revenue and Customs seeking to carry out an inspection under sub-paragraph (2)(b) must provide a notice in writing as follows—
- (a) if the occupier of the premises is present at the time the inspection is to begin, the notice must be provided to the occupier,
  - (b) if the occupier of the premises is not present but a person who appears to the officer to be in charge of the premises is present, the notice must be provided to that person, and
  - (c) in any other case, the notice must be left in a prominent place on the premises.
- (4) The notice referred to in sub-paragraph (3) must state the possible consequences of obstructing the officer in the exercise of the power.
- (5) If a notice referred to in sub-paragraph (3) is given <sup>[F37]</sup> in respect of an inspection approved by] the <sup>[F38]</sup>tribunal] (see paragraph 13), it must state that <sup>[F39]</sup>the inspection has been so approved].

#### Textual Amendments

**F36** Words in Sch. 36 para. 12(1) substituted (1.4.2010) by Finance Act 2009 (c. 10), s. 96(3), Sch. 48 para. 4(2); S.I. 2009/3054, art. 2

**F37** Words in Sch. 36 para. 12(5) substituted (21.7.2009) by Finance Act 2009 (c. 10), Sch. 47 para. 7(a)

**F38** Word in Sch. 36 para. 12(5) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), Sch. 1 para. 471(2)

**F39** Words in Sch. 36 para. 12(5) substituted (21.7.2009) by Finance Act 2009 (c. 10), Sch. 47 para. 7(b)

#### Modifications etc. (not altering text)

**C35** Sch. 36 para. 12 applied (20.3.2014) (with effect in accordance with Sch. 7 para. 5(1) of the amending Act) by 2004 c. 12, s. 153B(4) (as inserted by Finance Act 2014 (c. 26), Sch. 7 paras. 3, 5(1))

**C36** Sch. 36 para. 12 applied (with effect in accordance with Sch. 7 para. 8(1) of the amending Act) by 2004 c. 12, s. 159B(3) (as inserted by Finance Act 2014 (c. 26), Sch. 7 paras. 7, 8(3))

**C37** Sch. 36 para. 12 applied (17.1.2017) by Savings (Government Contributions) Act 2017 (c. 2), s. 6(2)(3), Sch. 1 para. 15(3)

**C38** Sch. 36 para. 12 applied (17.1.2017) by Savings (Government Contributions) Act 2017 (c. 2), s. 6(2)(3), Sch. 2 para. 21(5)

*Status: Point in time view as at 16/11/2017.*

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### Commencement Information

**I12** Sch. 36 para. 12 in force at 1.4.2009 by [S.I. 2009/404](#), [art. 2](#)

### *[<sup>F40</sup>Powers to inspect property for valuation etc*

### Textual Amendments

**F40** Sch. 36 paras. 12A, 12B and cross-headings inserted (1.4.2010) by [Finance Act 2009 \(c. 10\)](#), s. 96(3), [Sch. 48 para. 5](#); [S.I. 2009/3054](#), [art. 2](#)

- 12A (1) An officer of Revenue and Customs may enter and inspect premises for the purpose of valuing the premises if the valuation is reasonably required for the purpose of checking any person's position as regards income tax or corporation tax.
- (2) An officer of Revenue and Customs may enter premises and inspect—
- (a) the premises, and
  - (b) any other property on the premises,
- for the purpose of valuing, measuring or determining the character of the premises or property.
- (3) Sub-paragraph (2) only applies if the valuation, measurement or determination is reasonably required for the purpose of checking any person's position as regards—
- (a) capital gains tax,
  - (b) corporation tax in respect of chargeable gains,
  - (c) inheritance tax,
  - (d) stamp duty land tax, <sup>F41</sup>...
  - (e) stamp duty reserve tax<sup>F42</sup>, or
  - (f) annual tax on enveloped dwellings.]
- (4) A person who the officer considers is needed to assist with the valuation, measurement or determination may enter and inspect the premises or property with the officer.

### Textual Amendments

**F41** Word in [Sch. 36 para. 12A\(3\)](#) omitted (17.7.2013) by virtue of [Finance Act 2013 \(c. 29\)](#), [Sch. 34 para. 2\(a\)](#)

**F42** [Sch. 36 para. 12A\(3\)\(f\)](#) and word inserted (17.7.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 34 para. 2\(b\)](#)

### *Carrying out inspections under paragraph 12A*

- 12B (1) An inspection under paragraph 12A may be carried out only if condition A or B is satisfied.
- (2) Condition A is that—
- (a) the inspection is carried out at a time agreed to by a relevant person, and
  - (b) the relevant person has been given notice in writing of the agreed time of the inspection.

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- (3) “Relevant person” means—
- (a) the occupier of the premises, or
  - (b) if the occupier cannot be identified or the premises are vacant, a person who controls the premises.
- (4) Condition B is that—
- (a) the inspection has been approved by the tribunal, and
  - (b) any relevant person specified by the tribunal has been given at least 7 days' notice in writing of the time of the inspection.
- (5) A notice under sub-paragraph (4)(b) must state the possible consequences of obstructing the officer in the exercise of the power.
- (6) If a notice is given under this paragraph in respect of an inspection approved by the tribunal (see paragraph 13), it must state that the inspection has been so approved.
- (7) An officer of Revenue and Customs seeking to carry out an inspection under paragraph 12A must produce evidence of authority to carry out the inspection if asked to do so by—
- (a) the occupier of the premises, or
  - (b) any other person who appears to the officer to be in charge of the premises or property.]

#### *Approval of [F43 tribunal]*

#### **Textual Amendments**

**F43** Word in Sch. 36 para. 13 heading substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 471(5)(a)**

- 13 (1) An officer of Revenue and Customs may ask the [F44 tribunal] to approve an inspection under this Part of this Schedule [F45 (and for the effect of obtaining such approval see paragraph 39 (penalties))].
- [F46(1A) An application for approval under this paragraph may be made without notice [F47 (except as required under sub-paragraph (2A))].]
- (2) The [F44 tribunal] may not approve an inspection [F48 under paragraph 10, 10A or 11] unless—
- (a) an application for approval is made by, or with the agreement of, an authorised officer of Revenue and Customs, and
  - (b) the [F49 tribunal] is satisfied that, in the circumstances, the inspection is justified.
- [F50(2A) The tribunal may not approve an inspection under paragraph 12A unless—
- (a) an application for approval is made by, or with the agreement of, an authorised officer of Revenue and Customs,
  - (b) the person whose tax position is the subject of the proposed inspection has been given a reasonable opportunity to make representations to the officer of Revenue and Customs about that inspection,

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- (c) the occupier of the premises has been given a reasonable opportunity to make such representations,
- (d) the tribunal has been given a summary of any representations made, and
- (e) the tribunal is satisfied that, in the circumstances, the inspection is justified.

(2B) Paragraph (c) of sub-paragraph (2A) does not apply if the tribunal is satisfied that the occupier of the premises cannot be identified.]

[<sup>F51</sup>(3) A decision of the tribunal under this paragraph is final (despite the provisions of sections 11 and 13 of the Tribunals, Courts and Enforcement Act 2007).]

#### Textual Amendments

- F44** Word in Sch. 36 para. 13 substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 471(5)(b)**
- F45** Words in Sch. 36 para. 13(1) inserted (1.4.2010) by [Finance Act 2009 \(c. 10\)](#), s. 96(3), **Sch. 48 para. 6(2)**; [S.I. 2009/3054](#), art. 2
- F46** Sch. 36 para. 13(1A) inserted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), **Sch. 47 para. 8(2)**
- F47** Words in Sch. 36 para. 13(1A) inserted (1.4.2010) by [Finance Act 2009 \(c. 10\)](#), s. 96(3), **Sch. 48 para. 6(3)**; [S.I. 2009/3054](#), art. 2
- F48** Words in Sch. 36 para. 13(2) inserted (1.4.2010) by [Finance Act 2009 \(c. 10\)](#), s. 96(3), **Sch. 48 para. 6(4)**; [S.I. 2009/3054](#), art. 2
- F49** Word in Sch. 36 para. 13(2)(b) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 471(5)(c)**
- F50** Sch. 36 para. 13(2A)(2B) inserted (1.4.2010) by [Finance Act 2009 \(c. 10\)](#), s. 96(3), **Sch. 48 para. 6(5)**; [S.I. 2009/3054](#), art. 2
- F51** Sch. 36 para. 13(3) inserted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), **Sch. 47 para. 8(3)**

#### Modifications etc. (not altering text)

- C39** Sch. 36 para. 13(1A) applied (20.3.2014) (with effect in accordance with [Sch. 7 para. 5\(1\)](#) of the amending Act) by [2004 c. 12, s. 153B\(7\)](#) (as inserted by [Finance Act 2014 \(c. 26\)](#), [Sch. 7 paras. 3, 5\(1\)](#))
- C40** Sch. 36 para. 13(1A) applied (with effect in accordance with [Sch. 7 para. 8\(1\)](#) of the amending Act) by [2004 c. 12, s. 159B\(6\)](#) (as inserted by [Finance Act 2014 \(c. 26\)](#), [Sch. 7 paras. 7, 8\(3\)](#))
- C41** Sch. 36 para. 13(1A) applied (17.1.2017) by [Savings \(Government Contributions\) Act 2017 \(c. 2\)](#), s. 6(2)(3), **Sch. 1 para. 15(6)**
- C42** Sch. 36 para. 13(1A) applied (17.1.2017) by [Savings \(Government Contributions\) Act 2017 \(c. 2\)](#), s. 6(2)(3), **Sch. 2 para. 21(8)**
- C43** Sch. 36 para. 13(2)(3) applied (20.3.2014) (with effect in accordance with [Sch. 7 para. 5\(1\)](#) of the amending Act) by [2004 c. 12, s. 153B\(7\)](#) (as inserted by [Finance Act 2014 \(c. 26\)](#), [Sch. 7 paras. 3, 5\(1\)](#))
- C44** Sch. 36 para. 13(2)(3) applied (with effect in accordance with [Sch. 7 para. 8\(1\)](#) of the amending Act) by [2004 c. 12, s. 159B\(3\)](#) (as inserted by [Finance Act 2014 \(c. 26\)](#), [Sch. 7 paras. 7, 8\(3\)](#))
- C45** Sch. 36 para. 13(2)(3) applied (17.1.2017) by [Savings \(Government Contributions\) Act 2017 \(c. 2\)](#), s. 6(2)(3), **Sch. 1 para. 15(6)**
- C46** Sch. 36 para. 13(2)(3) applied (17.1.2017) by [Savings \(Government Contributions\) Act 2017 \(c. 2\)](#), s. 6(2)(3), **Sch. 2 para. 21(8)**

#### Commencement Information

- I13** Sch. 36 para. 13 in force at 1.4.2009 by [S.I. 2009/404](#), **art. 2**

#### *Restrictions and special cases*

14 This Part of this Schedule has effect subject to Parts 4 and 6 of this Schedule.

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#### Commencement Information

**I14** Sch. 36 para. 14 in force at 1.4.2009 by S.I. 2009/404, art. 2

### PART 3

#### FURTHER POWERS

##### *Power to copy documents*

- 15 Where a document (or a copy of a document) is produced to, or inspected by, an officer of Revenue and Customs, such an officer may take copies of, or make extracts from, the document.

#### Modifications etc. (not altering text)

- C47** Sch. 36 para. 15 applied (20.3.2014) (with effect in accordance with Sch. 7 para. 5(1) of the amending Act) by 2004 c. 12, s. 153B(4) (as inserted by Finance Act 2014 (c. 26), Sch. 7 paras. 3, 5(1))
- C48** Sch. 36 para. 15 applied (20.3.2014) (with effect in accordance with Sch. 7 para. 5(1) of the amending Act) by 2004 c. 12, s. 153A(3) (as inserted by Finance Act 2014 (c. 26), Sch. 7 paras. 3, 5(1))
- C49** Sch. 36 para. 15 applied (with effect in accordance with Sch. 7 para. 8(1) of the amending Act) by 2004 c. 12, s. 159A(2) (as inserted by Finance Act 2014 (c. 26), Sch. 7 paras. 7, 8(3))
- C50** Sch. 36 para. 15 applied (with effect in accordance with Sch. 7 para. 8(1) of the amending Act) by 2004 c. 12, s. 159B(3) (as inserted by Finance Act 2014 (c. 26), Sch. 7 paras. 7, 8(3))
- C51** Sch. 36 para. 15 applied (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by 2010 c. 8, Sch. 7A para. 66(1) (as inserted by Finance (No. 2) Act 2017 (c. 32), Sch. 5 para. 2 (with Sch. 5 para. 28))

#### Commencement Information

**I15** Sch. 36 para. 15 in force at 1.4.2009 by S.I. 2009/404, art. 2

##### *Power to remove documents*

- 16 (1) Where a document is produced to, or inspected by, an officer of Revenue and Customs, such an officer may—
- remove the document at a reasonable time, and
  - retain it for a reasonable period,
- if it appears to the officer to be necessary to do so.
- (2) Where a document is removed in accordance with sub-paragraph (1), the person who produced the document may request—
- a receipt for the document, and
  - if the document is reasonably required for any purpose, a copy of the document,
- and an officer of Revenue and Customs must comply with such a request without charge.
- (3) The removal of a document under this paragraph is not to be regarded as breaking any lien claimed on the document.

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- (4) Where a document removed under this paragraph is lost or damaged, the Commissioners are liable to compensate the owner of the document for any expenses reasonably incurred in replacing or repairing the document.
- (5) In this paragraph references to a document include a copy of a document.

#### **Modifications etc. (not altering text)**

- C52** Sch. 36 para. 16 applied (20.3.2014) (with effect in accordance with Sch. 7 para. 5(1) of the amending Act) by 2004 c. 12, s. 153B(4) (as inserted by Finance Act 2014 (c. 26), Sch. 7 paras. 3, 5(1))
- C53** Sch. 36 para. 16 applied (20.3.2014) (with effect in accordance with Sch. 7 para. 5(1) of the amending Act) by 2004 c. 12, s. 153A(3) (as inserted by Finance Act 2014 (c. 26), Sch. 7 paras. 3, 5(1))
- C54** Sch. 36 para. 16 applied (with effect in accordance with Sch. 7 para. 8(1) of the amending Act) by 2004 c. 12, s. 159B(3) (as inserted by Finance Act 2014 (c. 26), Sch. 7 paras. 7, 8(3))
- C55** Sch. 36 para. 16 applied (with effect in accordance with Sch. 7 para. 8(1) of the amending Act) by 2004 c. 12, s. 159A(2) (as inserted by Finance Act 2014 (c. 26), Sch. 7 paras. 7, 8(3))
- C56** Sch. 36 para. 16 applied (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by 2010 c. 8, Sch. 7A para. 66(1) (as inserted by Finance (No. 2) Act 2017 (c. 32), Sch. 5 para. 2 (with Sch. 5 para. 28))

#### **Commencement Information**

- I16** Sch. 36 para. 16 in force at 1.4.2009 by S.I. 2009/404, art. 2

#### *Power to mark assets and to record information*

- 17 The powers under Part 2 of this Schedule include—
- (a) power to mark business assets, and anything containing business assets, for the purpose of indicating that they have been inspected, and
  - (b) power to obtain and record information (whether electronically or otherwise) relating to the premises, [<sup>F52</sup>property, goods,] assets and documents that have been inspected.

#### **Textual Amendments**

- F52** Words in Sch. 36 para. 17(b) inserted (1.4.2010) by Finance Act 2009 (c. 10), s. 96(3), Sch. 48 para. 7; S.I. 2009/3054, art. 2

#### **Commencement Information**

- I17** Sch. 36 para. 17 in force at 1.4.2009 by S.I. 2009/404, art. 2

## **PART 4**

### **RESTRICTIONS ON POWERS**

#### *Documents not in person's possession or power*

- 18 An information notice only requires a person to produce a document if it is in the person's possession or power.



*Status: Point in time view as at 16/11/2017.*

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#### Modifications etc. (not altering text)

- C57** Sch. 36 paras. 18-20 applied (20.3.2014) (with effect in accordance with Sch. 7 para. 5(1) of the amending Act) by 2004 c. 12, s. 153A(3) (as inserted by Finance Act 2014 (c. 26), Sch. 7 paras. 3, 5(1))
- C58** Sch. 36 paras. 18-20 applied (with effect in accordance with Sch. 7 para. 8(1) of the amending Act) by 2004 c. 12, s. 159A(2) (as inserted by Finance Act 2014 (c. 26), Sch. 7 paras. 7, 8(3))
- C59** Sch. 36 paras. 18-20 applied (17.1.2017) by Savings (Government Contributions) Act 2017 (c. 2), s. 6(2)(3), Sch. 1 para. 6(3)
- C60** Sch. 36 paras. 18-20 applied (17.1.2017) by Savings (Government Contributions) Act 2017 (c. 2), s. 6(2)(3), Sch. 1 para. 10(4)
- C61** Sch. 36 paras. 18-20 applied (17.1.2017) by Savings (Government Contributions) Act 2017 (c. 2), s. 6(2)(3), Sch. 2 para. 19(2)
- C62** Sch. 36 para. 18 applied (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by 2010 c. 8, Sch. 7A para. 66(1) (as inserted by Finance (No. 2) Act 2017 (c. 32), Sch. 5 para. 2 (with Sch. 5 para. 28))

#### Commencement Information

- I18** Sch. 36 para. 18 in force at 1.4.2009 by S.I. 2009/404, art. 2

#### *Types of information*

- 19 (1) An information notice does not require a person to provide or produce—
- (a) information that relates to the conduct of a pending appeal relating to tax or any part of a document containing such information,
  - [<sup>F53</sup>(aa) information that relates to the conduct of a pending appeal under the Savings (Government Contributions) Act 2017 or any part of a document containing such information,] or
  - (b) journalistic material (as defined in section 13 of the Police and Criminal Evidence Act 1984 (c. 60)) or information contained in such material.
- (2) An information notice does not require a person to provide or produce personal records (as defined in section 12 of the Police and Criminal Evidence Act 1984) or information contained in such records, subject to sub-paragraph (3).
- (3) An information notice may require a person—
- (a) to produce documents, or copies of documents, that are personal records, omitting any information whose inclusion (whether alone or with other information) makes the original documents personal records (“personal information”), and
  - (b) to provide any information contained in such records that is not personal information.

#### Textual Amendments

- F53** Sch. 36 para. 19(1)(aa) inserted (17.1.2017) by Savings (Government Contributions) Act 2017 (c. 2), ss. 5(3), 6(2)(3)

#### Modifications etc. (not altering text)

- C57** Sch. 36 paras. 18-20 applied (20.3.2014) (with effect in accordance with Sch. 7 para. 5(1) of the amending Act) by 2004 c. 12, s. 153A(3) (as inserted by Finance Act 2014 (c. 26), Sch. 7 paras. 3, 5(1))

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- C58** Sch. 36 paras. 18-20 applied (with effect in accordance with Sch. 7 para. 8(1) of the amending Act) by 2004 c. 12, s. 159A(2) (as inserted by Finance Act 2014 (c. 26), Sch. 7 paras. 7, 8(3))
- C59** Sch. 36 paras. 18-20 applied (17.1.2017) by Savings (Government Contributions) Act 2017 (c. 2), s. 6(2)(3), Sch. 1 para. 6(3)
- C60** Sch. 36 paras. 18-20 applied (17.1.2017) by Savings (Government Contributions) Act 2017 (c. 2), s. 6(2)(3), Sch. 1 para. 10(4)
- C61** Sch. 36 paras. 18-20 applied (17.1.2017) by Savings (Government Contributions) Act 2017 (c. 2), s. 6(2)(3), Sch. 2 para. 19(2)
- C63** Sch. 36 para. 19 applied (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by 2010 c. 8, Sch. 7A para. 66(1) (as inserted by Finance (No. 2) Act 2017 (c. 32), Sch. 5 para. 2 (with Sch. 5 para. 28))

#### Commencement Information

- I19** Sch. 36 para. 19 in force at 1.4.2009 by S.I. 2009/404, art. 2

#### Old documents

- 20 An information notice may not require a person to produce a document if the whole of the document originates more than 6 years before the date of the notice, unless the notice is given by, or with the agreement of, an authorised officer.

#### Modifications etc. (not altering text)

- C57** Sch. 36 paras. 18-20 applied (20.3.2014) (with effect in accordance with Sch. 7 para. 5(1) of the amending Act) by 2004 c. 12, s. 153A(3) (as inserted by Finance Act 2014 (c. 26), Sch. 7 paras. 3, 5(1))
- C58** Sch. 36 paras. 18-20 applied (with effect in accordance with Sch. 7 para. 8(1) of the amending Act) by 2004 c. 12, s. 159A(2) (as inserted by Finance Act 2014 (c. 26), Sch. 7 paras. 7, 8(3))
- C59** Sch. 36 paras. 18-20 applied (17.1.2017) by Savings (Government Contributions) Act 2017 (c. 2), s. 6(2)(3), Sch. 1 para. 6(3)
- C60** Sch. 36 paras. 18-20 applied (17.1.2017) by Savings (Government Contributions) Act 2017 (c. 2), s. 6(2)(3), Sch. 1 para. 10(4)
- C61** Sch. 36 paras. 18-20 applied (17.1.2017) by Savings (Government Contributions) Act 2017 (c. 2), s. 6(2)(3), Sch. 2 para. 19(2)
- C64** Sch. 36 para. 20 applied (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by 2010 c. 8, Sch. 7A para. 66(1) (as inserted by Finance (No. 2) Act 2017 (c. 32), Sch. 5 para. 2 (with Sch. 5 para. 28))

#### Commencement Information

- I20** Sch. 36 para. 20 in force at 1.4.2009 by S.I. 2009/404, art. 2

#### Taxpayer notices <sup>F54</sup>following tax return

#### Textual Amendments

- F54** Words in Sch. 36 para. 21 cross-heading inserted (1.4.2010) by Finance Act 2009 (c. 10), s. 96(3), Sch. 48 para. 8(3); S.I. 2009/3054, art. 2

- 21 (1) Where a person has made a tax return in respect of a chargeable period under section 8, 8A or 12AA of TMA 1970 (returns for purpose of income tax and capital gains tax), a taxpayer notice may not be given for the purpose of checking that

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person's income tax position or capital gains tax position in relation to the chargeable period.

- (2) Where a person has made a tax return in respect of a chargeable period under paragraph 3 of Schedule 18 to FA 1998 (company tax returns), a taxpayer notice may not be given for the purpose of checking that person's corporation tax position in relation to the chargeable period.
- (3) Sub-paragraphs (1) and (2) do not apply where, or to the extent that, any of conditions A to D is met.
- (4) Condition A is that a notice of enquiry has been given in respect of—
  - (a) the return, or
  - (b) a claim or election (or an amendment of a claim or election) made by the person in relation to the chargeable period in respect of the tax (or one of the taxes) to which the return relates (“relevant tax”),and the enquiry has not been completed [<sup>F55</sup>so far as relating to the matters to which the taxpayer notice relates].
- (5) In sub-paragraph (4), “notice of enquiry” means a notice under—
  - (a) section 9A or 12AC of, or paragraph 5 of Schedule 1A to, TMA 1970, or
  - (b) paragraph 24 of Schedule 18 to FA 1998.
- (6) Condition B is that [<sup>F56</sup>, as regards the person,] an officer of Revenue and Customs has reason to suspect that—
  - (a) an amount that ought to have been assessed to relevant tax for the chargeable period may not have been assessed,
  - (b) an assessment to relevant tax for the chargeable period may be or have become insufficient, or
  - (c) relief from relevant tax given for the chargeable period may be or have become excessive.
- (7) Condition C is that the notice is given for the purpose of obtaining any information or document that is also required for the purpose of checking [<sup>F57</sup>the] person's [<sup>F58</sup>position as regards any tax other than income tax, capital gains tax or corporation tax].
- (8) Condition D is that the notice is given for the purpose of obtaining any information or document that is required (or also required) for the purpose of checking the person's position as regards any deductions or repayments [<sup>F59</sup>of tax or withholding of income] referred to in paragraph 64(2) [<sup>F60</sup>or (2A)] (PAYE etc).
- [<sup>F61</sup>(9) In this paragraph references to the person who made the return are only to that person in the capacity in which the return was made.]

#### Textual Amendments

- F55** Words in [Sch. 36 para. 21\(4\)](#) inserted (with effect in accordance with Sch. 15 para. 44 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 15 para. 36](#)
- F56** Words in Sch. 36 para. 21(6) inserted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 47 para. 9\(2\)](#)
- F57** Word in Sch. 36 para. 21(7) substituted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 47 para. 9\(3\)](#)
- F58** Words in [Sch. 36 para. 21\(7\)](#) substituted (1.4.2010) by [Finance Act 2009 \(c. 10\)](#), s. 96(3), [Sch. 48 para. 8\(2\)](#); S.I. 2009/3054, art. 2

*Status: Point in time view as at 16/11/2017.*

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- F59** Words in Sch. 36 para. 21(8) inserted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 47 para. 9\(4\)\(a\)](#)  
**F60** Word in Sch. 36 para. 21(8) inserted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 47 para. 9\(4\)\(b\)](#)  
**F61** Sch. 36 para. 21(9) inserted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 47 para. 9\(5\)](#)

#### Modifications etc. (not altering text)

- C65** [Sch. 36 para. 21](#) applied (8.4.2010) by [Finance Act 2010 \(c. 13\)](#), [Sch. 1 para. 36\(2\)](#)

#### Commencement Information

- I21** Sch. 36 para. 21 in force at 1.4.2009 by [S.I. 2009/404](#), [art. 2](#)

### *[<sup>F62</sup>Taxpayer notices following NRCGT return*

#### Textual Amendments

- F62** [Sch. 36 para. 21ZA](#) and cross-heading inserted (with effect in accordance with Sch. 7 para. 60 of the amending Act) by [Finance Act 2015 \(c. 11\)](#), [Sch. 7 para. 57](#)

- 21ZA (1) Where a person has delivered an NRCGT return with respect to a non-resident CGT disposal, a taxpayer notice may not be given for the purpose of checking the person's capital gains tax position as regards the matters dealt with in that return.
- (2) Sub-paragraph (1) does not apply where, or to the extent that, any of conditions A to C is met.
- (3) Condition A is that notice of enquiry has been given in respect of—
- the return, or
  - a claim (or an amendment of a claim) made by the person in relation to the chargeable period,
- and the enquiry has not been completed [<sup>F63</sup>so far as relating to the matters to which the taxpayer notice relates].
- (4) In sub-paragraph (3) “notice of enquiry” means a notice under section 12ZM of TMA 1970.
- (5) Condition B is that an officer of Revenue and Customs has reason to suspect that—
- an amount that ought to have been assessed under section 12ZE of TMA 1970 as payable on account of the person's liability to capital gains tax for the tax year to which the return relates has not been so assessed by the filing date for the return, or
  - an assessment under section 12ZE of TMA 1970 of the amount payable on account of P's liability to capital gains tax for the tax year to which the return relates has become insufficient.
- (6) Condition C is that the notice is given for the purpose of obtaining any information or document that is also required for the purpose of checking that person's position as regards a tax other than capital gains tax.
- (7) In this paragraph—
- “NRCGT return” has the meaning given by section 12ZB of TMA 1970;  
“non-resident CGT disposal” has the meaning given by section 14B of TCGA 1992.]

*Status: Point in time view as at 16/11/2017.*

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#### Textual Amendments

**F63** Words in [Sch. 36 para. 21ZA\(3\)](#) inserted (with effect in accordance with Sch. 15 para. 44 of the amending Act) by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 15 para. 36](#)

#### *[<sup>F64</sup>Taxpayer notices following land transaction return*

#### Textual Amendments

**F64** [Sch. 36 para. 21A](#) and cross-heading inserted (1.4.2010) by [Finance Act 2009 \(c. 10\)](#), s. 96(3), [Sch. 48 para. 9](#); [S.I. 2009/3054](#), art. 2

- 21A (1) Where a person has delivered a land transaction return under section 76 of FA 2003 (returns for purposes of stamp duty land tax) in respect of a transaction, a taxpayer notice may not be given for the purpose of checking that person's stamp duty land tax position in relation to that transaction.
- (2) Sub-paragraph (1) does not apply where, or to the extent that, any of conditions A to C is met.
- (3) Condition A is that a notice of enquiry has been given in respect of—
- the return, or
  - a claim (or an amendment of a claim) made by the person in connection with the transaction, and the enquiry has not been completed.
- (4) In sub-paragraph (3) “notice of enquiry” means a notice under paragraph 12 of Schedule 10, or paragraph 7 of Schedule 11A, to FA 2003.
- (5) Condition B is that, as regards the person, an officer of Revenue and Customs has reason to suspect that—
- an amount that ought to have been assessed to stamp duty land tax in respect of the transaction may not have been assessed,
  - an assessment to stamp duty land tax in respect of the transaction may be or have become insufficient, or
  - relief from stamp duty land tax in respect of the transaction may be or have become excessive.
- (6) Condition C is that the notice is given for the purpose of obtaining any information or document that is also required for the purpose of checking that person's position as regards a tax other than stamp duty land tax.]

#### *[<sup>F65</sup>Annual tax on enveloped dwellings: taxpayer notices following return*

#### Textual Amendments

**F65** [Sch. 36 para. 21B](#) and cross-heading inserted (17.7.2013) by [Finance Act 2013 \(c. 29\)](#), [Sch. 34 para. 3](#)

- 21B (1) Where a person has delivered, for a chargeable period with respect to a single-dwelling interest—

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- (a) an annual tax on enveloped dwellings return, or
  - (b) a return of the adjusted chargeable amount,
- a taxpayer notice may not be given for the purpose of checking the person's annual tax on enveloped dwellings position as regards the matters dealt with in that return.
- (2) Sub-paragraph (1) does not apply where, or to the extent that, any of conditions A to C is met.
  - (3) Condition A is that notice of enquiry has been given in respect of—
    - (a) the return, or
    - (b) a claim (or an amendment of a claim) made by the person in relation to the chargeable period,
 and the enquiry has not been completed.
  - (4) In sub-paragraph (3) “notice of enquiry” means a notice under paragraph 8 of Schedule 33 to FA 2013 or paragraph 7 of Schedule 11A to FA 2003 (as applied by paragraphs 28(2) and 31(3) of Schedule 33 to FA 2013).
  - (5) Condition B is that, as regards the person, an officer of Revenue and Customs has reason to suspect that—
    - (a) an amount that ought to have been assessed to annual tax on enveloped dwellings for the chargeable period may not have been assessed,
    - (b) an assessment to annual tax on enveloped dwellings for the chargeable period may be or have become insufficient, or
    - (c) relief from annual tax on enveloped dwellings for the chargeable period may be or have become excessive.
  - (6) Condition C is that the notice is given for the purpose of obtaining any information or document that is also required for the purpose of checking that person's position as regards a tax other than annual tax on enveloped dwellings.
  - (7) In this Schedule references to a “single-dwelling interest” are to be read in accordance with section 108 of FA 2013.]

#### *Deceased persons*

- 22 An information notice given for the purpose of checking the tax position of a person who has died may not be given more than 4 years after the person's death.

#### **Commencement Information**

**I22** Sch. 36 para. 22 in force at 1.4.2009 by [S.I. 2009/404](#), [art. 2](#)

#### *Privileged communications between professional legal advisers and clients*

- 23 (1) An information notice does not require a person—
  - (a) to provide privileged information, or
  - (b) to produce any part of a document that is privileged.
- (2) For the purpose of this Schedule, information or a document is privileged if it is information or a document in respect of which a claim to legal professional

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privilege, or (in Scotland) to confidentiality of communications as between client and professional legal adviser, could be maintained in legal proceedings.

(3) The Commissioners may by regulations make provision for the resolution by the [<sup>F66</sup>tribunal] of disputes as to whether any information or document is privileged.

(4) The regulations may, in particular, make provision as to—

(a) the custody of a document while its status is being decided, <sup>F67</sup>...

<sup>F67</sup>(b) .....

#### Textual Amendments

**F66** Word in Sch. 36 para. 23(3) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 471(6)(a)**

**F67** Sch. 36 para. 23(4)(b) and word omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 471(6)(b)**

#### Modifications etc. (not altering text)

**C66** Sch. 36 paras. 23-27 applied (20.3.2014) (with effect in accordance with [Sch. 7 para. 5\(1\)](#) of the amending Act) by [2004 c. 12, s. 153A\(3\)](#) (as inserted by [Finance Act 2014 \(c. 26\)](#), [Sch. 7 paras. 3, 5\(1\)](#))

**C67** Sch. 36 paras. 23-27 applied (with effect in accordance with [Sch. 7 para. 8\(1\)](#) of the amending Act) by [2004 c. 12, s. 159A\(2\)](#) (as inserted by [Finance Act 2014 \(c. 26\)](#), [Sch. 7 paras. 7, 8\(3\)](#))

**C68** Sch. 36 paras. 23-27 applied (17.1.2017) by [Savings \(Government Contributions\) Act 2017 \(c. 2\)](#), s. 6(2)(3), **Sch. 1 para. 10(4)**

**C69** Sch. 36 paras. 23-27 applied (17.1.2017) by [Savings \(Government Contributions\) Act 2017 \(c. 2\)](#), s. 6(2)(3), **Sch. 2 para. 19(2)**

**C70** Sch. 36 paras. 23-27 applied (17.1.2017) by [Savings \(Government Contributions\) Act 2017 \(c. 2\)](#), s. 6(2)(3), **Sch. 1 para. 6(3)**

**C71** Sch. 36 para. 23 applied (with effect in accordance with [Sch. 5 para. 25\(1\)\(2\)](#) of the amending Act) by [2010 c. 8, Sch. 7A para. 66\(1\)](#) (as inserted by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 5 para. 2](#) (with [Sch. 5 para. 28](#)))

#### Commencement Information

**I23** Sch. 36 para. 23 in force at 1.4.2009 by [S.I. 2009/404](#), **art. 2**

#### Auditors

24 (1) An information notice does not require a person who has been appointed as an auditor for the purpose of an enactment—

(a) to provide information held in connection with the performance of the person's functions under that enactment, or

(b) to produce documents which are that person's property and which were created by that person or on that person's behalf for or in connection with the performance of those functions.

(2) Sub-paragraph (1) has effect subject to paragraph 26.

#### Modifications etc. (not altering text)

**C66** Sch. 36 paras. 23-27 applied (20.3.2014) (with effect in accordance with [Sch. 7 para. 5\(1\)](#) of the amending Act) by [2004 c. 12, s. 153A\(3\)](#) (as inserted by [Finance Act 2014 \(c. 26\)](#), [Sch. 7 paras. 3, 5\(1\)](#))

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- C67** Sch. 36 paras. 23-27 applied (with effect in accordance with Sch. 7 para. 8(1) of the amending Act) by 2004 c. 12, s. 159A(2) (as inserted by Finance Act 2014 (c. 26), Sch. 7 paras. 7, 8(3))
- C68** Sch. 36 paras. 23-27 applied (17.1.2017) by Savings (Government Contributions) Act 2017 (c. 2), s. 6(2)(3), Sch. 1 para. 10(4)
- C69** Sch. 36 paras. 23-27 applied (17.1.2017) by Savings (Government Contributions) Act 2017 (c. 2), s. 6(2)(3), Sch. 2 para. 19(2)
- C70** Sch. 36 paras. 23-27 applied (17.1.2017) by Savings (Government Contributions) Act 2017 (c. 2), s. 6(2)(3), Sch. 1 para. 6(3)
- C72** Sch. 36 paras. 24-27 applied (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by 2010 c. 8, Sch. 7A para. 66(1) (as inserted by Finance (No. 2) Act 2017 (c. 32), Sch. 5 para. 2 (with Sch. 5 para. 28))

#### Commencement Information

- I24** Sch. 36 para. 24 in force at 1.4.2009 by S.I. 2009/404, art. 2

#### Tax advisers

- 25 (1) An information notice does not require a tax adviser—
- (a) to provide information about relevant communications, or
  - (b) to produce documents which are the tax adviser's property and consist of relevant communications.
- (2) Sub-paragraph (1) has effect subject to paragraph 26.
- (3) In this paragraph—
- “relevant communications” means communications between the tax adviser and—
- (a) a person in relation to whose tax affairs he has been appointed, or
  - (b) any other tax adviser of such a person,
- the purpose of which is the giving or obtaining of advice about any of those tax affairs, and
- “tax adviser” means a person appointed to give advice about the tax affairs of another person (whether appointed directly by that person or by another tax adviser of that person).

#### Modifications etc. (not altering text)

- C66** Sch. 36 paras. 23-27 applied (20.3.2014) (with effect in accordance with Sch. 7 para. 5(1) of the amending Act) by 2004 c. 12, s. 153A(3) (as inserted by Finance Act 2014 (c. 26), Sch. 7 paras. 3, 5(1))
- C67** Sch. 36 paras. 23-27 applied (with effect in accordance with Sch. 7 para. 8(1) of the amending Act) by 2004 c. 12, s. 159A(2) (as inserted by Finance Act 2014 (c. 26), Sch. 7 paras. 7, 8(3))
- C68** Sch. 36 paras. 23-27 applied (17.1.2017) by Savings (Government Contributions) Act 2017 (c. 2), s. 6(2)(3), Sch. 1 para. 10(4)
- C69** Sch. 36 paras. 23-27 applied (17.1.2017) by Savings (Government Contributions) Act 2017 (c. 2), s. 6(2)(3), Sch. 2 para. 19(2)
- C70** Sch. 36 paras. 23-27 applied (17.1.2017) by Savings (Government Contributions) Act 2017 (c. 2), s. 6(2)(3), Sch. 1 para. 6(3)
- C72** Sch. 36 paras. 24-27 applied (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by 2010 c. 8, Sch. 7A para. 66(1) (as inserted by Finance (No. 2) Act 2017 (c. 32), Sch. 5 para. 2 (with Sch. 5 para. 28))



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#### Commencement Information

**I25** Sch. 36 para. 25 in force at 1.4.2009 by [S.I. 2009/404](#), [art. 2](#)

#### *Auditors and tax advisers: supplementary*

- 26 (1) Paragraphs 24(1) and 25(1) do not have effect in relation to—
- (a) information explaining any information or document which the person to whom the notice is given has, as tax accountant, assisted any client in preparing for, or delivering to, HMRC, or
  - (b) a document which contains such information.
- (2) In the case of a notice given under paragraph 5, paragraphs 24(1) and 25(1) do not have effect in relation to—
- (a) any information giving the identity or address of a person to whom the notice relates or of a person who has acted on behalf of such a person, or
  - (b) a document which contains such information.
- (3) Paragraphs 24(1) and 25(1) are not disapplied by sub-paragraph (1) or (2) if the information in question has already been provided, or a document containing the information in question has already been produced, to an officer of Revenue and Customs.

#### Modifications etc. (not altering text)

- C66** Sch. 36 paras. 23-27 applied (20.3.2014) (with effect in accordance with [Sch. 7 para. 5\(1\)](#) of the amending Act) by [2004 c. 12, s. 153A\(3\)](#) (as inserted by [Finance Act 2014 \(c. 26\)](#), [Sch. 7 paras. 3, 5\(1\)](#))
- C67** Sch. 36 paras. 23-27 applied (with effect in accordance with [Sch. 7 para. 8\(1\)](#) of the amending Act) by [2004 c. 12, s. 159A\(2\)](#) (as inserted by [Finance Act 2014 \(c. 26\)](#), [Sch. 7 paras. 7, 8\(3\)](#))
- C68** Sch. 36 paras. 23-27 applied (17.1.2017) by [Savings \(Government Contributions\) Act 2017 \(c. 2\)](#), s. 6(2)(3), [Sch. 1 para. 10\(4\)](#)
- C69** Sch. 36 paras. 23-27 applied (17.1.2017) by [Savings \(Government Contributions\) Act 2017 \(c. 2\)](#), s. 6(2)(3), [Sch. 2 para. 19\(2\)](#)
- C70** Sch. 36 paras. 23-27 applied (17.1.2017) by [Savings \(Government Contributions\) Act 2017 \(c. 2\)](#), s. 6(2)(3), [Sch. 1 para. 6\(3\)](#)
- C72** Sch. 36 paras. 24-27 applied (with effect in accordance with [Sch. 5 para. 25\(1\)\(2\)](#) of the amending Act) by [2010 c. 8, Sch. 7A para. 66\(1\)](#) (as inserted by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), [Sch. 5 para. 2](#) (with [Sch. 5 para. 28](#)))

#### Commencement Information

**I26** Sch. 36 para. 26 in force at 1.4.2009 by [S.I. 2009/404](#), [art. 2](#)

- 27 (1) This paragraph applies where paragraph 24(1) or 25(1) is disapplied in relation to a document by paragraph 26(1) or (2).
- (2) An information notice that requires the document to be produced has effect as if it required any part or parts of the document containing the information mentioned in paragraph 26(1) or (2) to be produced.

*Status: Point in time view as at 16/11/2017.*

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#### Modifications etc. (not altering text)

- C66** Sch. 36 paras. 23-27 applied (20.3.2014) (with effect in accordance with Sch. 7 para. 5(1) of the amending Act) by 2004 c. 12, s. 153A(3) (as inserted by Finance Act 2014 (c. 26), Sch. 7 paras. 3, 5(1))
- C67** Sch. 36 paras. 23-27 applied (with effect in accordance with Sch. 7 para. 8(1) of the amending Act) by 2004 c. 12, s. 159A(2) (as inserted by Finance Act 2014 (c. 26), Sch. 7 paras. 7, 8(3))
- C68** Sch. 36 paras. 23-27 applied (17.1.2017) by Savings (Government Contributions) Act 2017 (c. 2), s. 6(2)(3), Sch. 1 para. 10(4)
- C69** Sch. 36 paras. 23-27 applied (17.1.2017) by Savings (Government Contributions) Act 2017 (c. 2), s. 6(2)(3), Sch. 2 para. 19(2)
- C70** Sch. 36 paras. 23-27 applied (17.1.2017) by Savings (Government Contributions) Act 2017 (c. 2), s. 6(2)(3), Sch. 1 para. 6(3)
- C72** Sch. 36 paras. 24-27 applied (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by 2010 c. 8, Sch. 7A para. 66(1) (as inserted by Finance (No. 2) Act 2017 (c. 32), Sch. 5 para. 2 (with Sch. 5 para. 28))

#### Commencement Information

- I27** Sch. 36 para. 27 in force at 1.4.2009 by S.I. 2009/404, art. 2

### *Corresponding restrictions on inspection of<sup>F68</sup> ... documents*

#### Textual Amendments

- F68** Word in Sch. 36 para. 28 cross-heading omitted (1.4.2010) by virtue of Finance Act 2009 (c. 10), s. 96(3), Sch. 48 para. 10; S.I. 2009/3054, art. 2

- 28 An officer of Revenue and Customs may not inspect a<sup>F69</sup> ... document under Part 2 of this Schedule if or to the extent that, by virtue of this Part of this Schedule, an information notice given at the time of the inspection to the occupier of the premises could not require the occupier to produce the document.

#### Textual Amendments

- F69** Word in Sch. 36 para. 28 omitted (1.4.2010) by virtue of Finance Act 2009 (c. 10), s. 96(3), Sch. 48 para. 10; S.I. 2009/3054, art. 2

#### Commencement Information

- I28** Sch. 36 para. 28 in force at 1.4.2009 by S.I. 2009/404, art. 2

## PART 5

### APPEALS AGAINST INFORMATION NOTICES

#### *Right to appeal against taxpayer notice*

- 29 (1) Where a taxpayer is given a taxpayer notice, the taxpayer may appeal<sup>F70</sup> ... against the notice or any requirement in the notice.

*Status: Point in time view as at 16/11/2017.*

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- (2) Sub-paragraph (1) does not apply to a requirement in a taxpayer notice to provide any information, or produce any document, that forms part of the taxpayer's statutory records.
- (3) Sub-paragraph (1) does not apply if the [<sup>F71</sup>tribunal] approved the giving of the notice in accordance with paragraph 3.

#### Textual Amendments

- F70** Words in Sch. 36 para. 29(1) omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 471(7)(a)**
- F71** Word in Sch. 36 para. 29(3) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 471(7)(b)**

#### Modifications etc. (not altering text)

- C73** [Sch. 36 para. 29](#) applied (13.8.2009) by 2007 c. 11, Sch. 11 para. 2(7) (as substituted by [The Finance Act 2009, Schedule 47 \(Consequential Amendments\) Order 2009 \(S.I. 2009/2035\)](#)), **Sch. para. 53**

#### Commencement Information

- I29** [Sch. 36 para. 29](#) in force at 1.4.2009 by [S.I. 2009/404](#), **art. 2**

#### *Right to appeal against third party notice*

- 30 (1) Where a person is given a third party notice, the person may appeal <sup>F72</sup>... against the notice or any requirement in the notice on the ground that it would be unduly onerous to comply with the notice or requirement.
- (2) Sub-paragraph (1) does not apply to a requirement in a third party notice to provide any information, or produce any document, that forms part of the taxpayer's statutory records.
- (3) Sub-paragraph (1) does not apply if the [<sup>F73</sup>tribunal] approved the giving of the notice in accordance with paragraph 3.

#### Textual Amendments

- F72** Words in Sch. 36 para. 30(1) omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 471(8)(a)**
- F73** Word in Sch. 36 para. 30(3) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 471(8)(b)**

#### Commencement Information

- I30** [Sch. 36 para. 30](#) in force at 1.4.2009 by [S.I. 2009/404](#), **art. 2**

*Status: Point in time view as at 16/11/2017.*

*Changes to legislation: Finance Act 2008, SCHEDULE 36 is up to date with all changes known to be in force on or before 01 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

*Right to appeal against notice given under paragraph 5 [F74 or 5A]*

**Textual Amendments**

**F74** Words in Sch. 36 para. 31 heading inserted (with effect in accordance with s. 224(7) of the amending Act) by Finance Act 2012 (c. 14), s. 224(5)

- 31 Where a person is given a notice under paragraph 5 [F75 or 5A], the person may appeal <sup>F76</sup>... against the notice or any requirement in the notice on the ground that it would be unduly onerous to comply with the notice or requirement.

**Textual Amendments**

**F75** Words in Sch. 36 para. 31 inserted (with effect in accordance with s. 224(7) of the amending Act) by Finance Act 2012 (c. 14), s. 224(4)

**F76** Words in Sch. 36 para. 31 omitted (1.4.2009) by virtue of The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), Sch. 1 para. 471(9)

**Commencement Information**

**I31** Sch. 36 para. 31 in force at 1.4.2009 by S.I. 2009/404, art. 2

*Procedure*

- 32 (1) Notice of an appeal under this Part of this Schedule must be given—
- (a) in writing,
  - (b) before the end of the period of 30 days beginning with the date on which the information notice is given, and
  - (c) to the officer of Revenue and Customs by whom the information notice was given.
- (2) Notice of an appeal under this Part of this Schedule must state the grounds of appeal.
- (3) On an appeal [F77 that is notified to the tribunal, the tribunal] may—
- (a) confirm the information notice or a requirement in the information notice,
  - (b) vary the information notice or such a requirement, or
  - (c) set aside the information notice or such a requirement.
- (4) Where the [F78 tribunal] confirms or varies the information notice or a requirement, the person to whom the information notice was given must comply with the notice or requirement—
- (a) within such period as is specified by the [F79 tribunal] , or
  - (b) if the [F80 tribunal] does not specify a period, within such period as is reasonably specified in writing by an officer of Revenue and Customs following the [F81 tribunal's] decision.
- [F82(5) Notwithstanding the provisions of sections 11 and 13 of the Tribunals, Courts and Enforcement Act 2007 a decision of the tribunal on an appeal under this Part of this Schedule is final.]

*Status: Point in time view as at 16/11/2017.*

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- (6) Subject to this paragraph, the provisions of Part 5 of TMA 1970 relating to appeals have effect in relation to appeals under this Part of this Schedule as they have effect in relation to an appeal against an assessment to income tax.

#### Textual Amendments

- F77** Words in Sch. 36 para. 32(3) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 471(10)(a)**
- F78** Word in Sch. 36 para. 32(4) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 471(10)(b)(i)**
- F79** Word in Sch. 36 para. 32(4)(a) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 471(10)(b)(ii)**
- F80** Word in Sch. 36 para. 32(4)(b) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 471(10)(b)(ii)**
- F81** Word in Sch. 36 para. 32(4)(b) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 471(10)(b)(iii)**
- F82** Sch. 36 para. 32(5) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 471(10)(c)**

#### Modifications etc. (not altering text)

- C74** Sch. 36 para. 32 applied (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), **Sch. 49 para. 4(2)** (with Sch. 49 para. 1)
- C75** Sch. 36 para. 32 applied (13.8.2009) by 2007 c. 11, Sch. 11 para. 2(7) (as substituted by [The Finance Act 2009, Schedule 47 \(Consequential Amendments\) Order 2009 \(S.I. 2009/2035\)](#), **Sch. para. 53**)
- C76** Sch. 36 para. 32 applied (20.3.2014) (with effect in accordance with Sch. 7 para. 5(1) of the amending Act) by 2004 c. 12, **s. 153A(6)** (as inserted by [Finance Act 2014 \(c. 26\)](#), Sch. 7 paras. 3, **5(1)**)
- C77** Sch. 36 para. 32 applied (with effect in accordance with Sch. 7 para. 8(1) of the amending Act) by 2004 c. 12, **s. 159A(5)** (as inserted by [Finance Act 2014 \(c. 26\)](#), Sch. 7 paras. 7, **8(3)**)
- C78** Sch. 36 para. 32 applied (with modifications) (17.1.2017) by [Savings \(Government Contributions\) Act 2017 \(c. 2\)](#), s. 6(2)(3), **Sch. 1 para. 10(7)**
- C79** Sch. 36 para. 32 applied (with modifications) (17.1.2017) by [Savings \(Government Contributions\) Act 2017 \(c. 2\)](#), s. 6(2)(3), **Sch. 2 para. 19(5)**
- C80** Sch. 36 para. 32 applied (with modifications) (17.1.2017) by [Savings \(Government Contributions\) Act 2017 \(c. 2\)](#), s. 6(2)(3), **Sch. 1 para. 6(6)**
- C81** Sch. 36 para. 32 applied (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by 2010 c. 8, **Sch. 7A para. 66(2)** (as inserted by [Finance \(No. 2\) Act 2017 \(c. 32\)](#), Sch. 5 para. 2 (with **Sch. 5 para. 28**))

#### Commencement Information

- I32** Sch. 36 para. 32 in force at 1.4.2009 by [S.I. 2009/404](#), **art. 2**

#### *Special cases*

- 33 This Part of this Schedule has effect subject to Part 6 of this Schedule.

#### Commencement Information

- I33** Sch. 36 para. 33 in force at 1.4.2009 by [S.I. 2009/404](#), **art. 2**

*Status: Point in time view as at 16/11/2017.*

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## PART 6

### SPECIAL CASES

#### *Supply of goods or services etc*

- 34 (1) This paragraph applies to a taxpayer notice or third party notice that refers only to information or documents that form part of any person's statutory records and relate to—
- (a) the supply of goods or services,
  - (b) the acquisition of goods from another member State, or
  - (c) the importation of goods from a place outside the member States in the course of carrying on a business.
- (2) Paragraph 3(1) (requirement for consent to, or approval of, third party notice) does not apply to such a notice.
- (3) Where a person is given such a notice, the person may not appeal <sup>F83</sup>... against the notice or any requirement in the notice.
- (4) Sections 5, 11 and 15 of, and Schedule 4 to, VATA 1994, and any orders made under those provisions, apply for the purposes of this paragraph as if it were part of that Act.

#### Textual Amendments

**F83** Words in Sch. 36 para. 34(3) omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 471(11)**

#### Commencement Information

**I34** Sch. 36 para. 34 in force at 1.4.2009 by [S.I. 2009/404](#), **art. 2**

#### *[<sup>F84</sup>Involves third parties*

#### Textual Amendments

**F84** [Sch. 36 paras. 34A-34C](#) and cross-headings inserted (1.4.2010) by [Finance Act 2009 \(c. 10\)](#), s. 96(3), **Sch. 48 para. 11**; [S.I. 2009/3054](#), art. 2

<sup>F85</sup>34A .....

#### Textual Amendments

**F85** [Sch. 36 para. 34A](#) omitted (with effect in accordance with Sch. 23 para. 65 of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), **Sch. 23 paras. 62(2), 65(1)(a)** (with [Sch. 23 paras. 50, 65\(1\)\(b\)](#))

#### *Registered pension schemes etc*

- 34B (1) This paragraph applies to a third party notice or a notice under paragraph 5 if it refers only to information or documents that relate to any pensions matter.
- (2) “Pensions matter” means any matter relating to—

*Status: Point in time view as at 16/11/2017.*

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- (a) a registered pension scheme,
  - (b) an annuity purchased with sums or assets held for the purposes of a registered pension scheme or a pre-2006 pension scheme, <sup>F86</sup> ...
  - (c) an employer-financed retirement benefits scheme,
    - [ a QROPS or former QROPS, or
  - <sup>F87</sup>(d)
  - (e) an annuity purchased with sums or assets held for the purposes of a QROPS or former QROPS.]
- (3) In relation to such a third party notice—
- (a) paragraph 3(1) (approval etc of third party notices) does not apply,
  - (b) paragraph 4(1) (copying third party notices to taxpayer) does not apply, and
  - (c) paragraph 30(1) (appeal) has effect as if it permitted an appeal on any grounds.
- (4) In relation to such a notice under paragraph 5—
- (a) sub-paragraphs (3) and (4) of that paragraph (approval of tribunal) have effect as if they permitted, but did not require, an authorised officer of Revenue and Customs to obtain the approval of the tribunal, and
  - (b) paragraph 31 (appeal) has effect as if it permitted an appeal on any grounds.
- [ In relation to a notice to which this paragraph applies that refers only to information <sup>F88</sup>(4A) or documents relating to a matter within sub-paragraph (2)(d) or (e), paragraph 20 (old documents) has effect as if the reference to 6 years were to 10 years.]
- (5) A person may not appeal against a requirement in the notice to provide any information, or produce any document, that forms part of any person's statutory records.
- (6) Where the notice relates to a matter within sub-paragraph (2)(a) or (b), the officer of Revenue and Customs who gives the notice must give a copy of the notice to the scheme administrator in relation to the pension scheme.
- (7) Where the notice relates to a matter within sub-paragraph (2)(c), the officer of Revenue and Customs who gives the notice must give a copy of the notice to the responsible person in relation to the employer-financed retirement benefits scheme.
- [ Where the notice relates to a matter within sub-paragraph (2)(d) or (e), the officer <sup>F89</sup>(7A) of Revenue and Customs who gives the notice must give a copy of the notice to the scheme manager in relation to the pension scheme.]
- (8) Sub-paragraphs (6) [<sup>F90</sup>to (7A)] do not apply if the notice is given to a person who, in relation to the scheme or annuity to which the notice relates, is a prescribed description of person.

#### Textual Amendments

- F86** Word in Sch. 36 para. 34B(2)(b) omitted (17.7.2013) by virtue of Finance Act 2013 (c. 29), s. 54(2)(a)
- F87** Sch. 36 para. 34B(2)(d)(e) inserted (17.7.2013) by Finance Act 2013 (c. 29), s. 54(2)(a)
- F88** Sch. 36 para. 34B(4A) inserted (17.7.2013) by Finance Act 2013 (c. 29), s. 54(2)(b)
- F89** Sch. 36 para. 34B(7A) inserted (17.7.2013) by Finance Act 2013 (c. 29), s. 54(2)(c)
- F90** Words in Sch. 36 para. 34B(8) substituted (17.7.2013) by Finance Act 2013 (c. 29), s. 54(2)(d)

*Status: Point in time view as at 16/11/2017.*

*Changes to legislation: Finance Act 2008, SCHEDULE 36 is up to date with all changes known to be in force on or before 01 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

**Modifications etc. (not altering text)**

**C82** Sch. 36 paras. 34B, 34C modified (17.7.2013) by Finance Act 2013 (c. 29), s. 54(4)

*Registered pension schemes etc: interpretation]*

34C In paragraph 34B—

“employer-financed retirement benefits scheme” has the same meaning as in Chapter 2 of Part 6 of ITEPA 2003 (see sections 393A and 393B of that Act);

“pension scheme” has the same meaning as in Part 4 of FA 2004;

“pre-2006 pension scheme” means a scheme that, at or in respect of any time before 6 April 2006, was—

- (a) a retirement benefits scheme approved for the purposes of Chapter 1 of Part 14 of ICTA,
- (b) a former approved superannuation fund (as defined in paragraph 1(3) of Schedule 36 to FA 2004),
- (c) a relevant statutory scheme (as defined in section 611A of ICTA) or a pension scheme treated as if it were such a scheme, or
- (d) a personal pension scheme approved under Chapter 4 of Part 14 of ICTA;

“prescribed” means prescribed by regulations made by the Commissioners;

[<sup>F91</sup>“QROPS” and “former QROPS” have the meanings given by section 169(8) of FA 2004;]

“registered pension scheme” means a pension scheme that is or has been a registered pension scheme within the meaning of Part 4 of FA 2004 or in relation to which an application for registration under that Part of that Act has been made;

“responsible person”, in relation to an employer-financed retirement benefits scheme, has the same meaning as in Chapter 2 of Part 6 of ITEPA 2003 (see section 399A of that Act);

“scheme administrator”, in relation to a pension scheme, has the same meaning as in Part 4 of FA 2004 (see section 270 of that Act);

[<sup>F91</sup>“scheme manager”, in relation to a pension scheme, has the meaning given by section 169(3) of FA 2004.]

**Textual Amendments**

**F91** Words in Sch. 36 para. 34C inserted (17.7.2013) by Finance Act 2013 (c. 29), s. 54(3)

**Modifications etc. (not altering text)**

**C82** Sch. 36 paras. 34B, 34C modified (17.7.2013) by Finance Act 2013 (c. 29), s. 54(4)

*Groups of undertakings*

35 (1) This paragraph applies where an undertaking is a parent undertaking in relation to another undertaking (a subsidiary undertaking).



*Status: Point in time view as at 16/11/2017.*

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- (2) Where a third party notice is given to any person for the purpose of checking the tax position of the parent undertaking and any of its subsidiary undertakings,<sup>[F92]</sup>—
- (a) paragraph 2(2) only requires the notice to state this and name the parent undertaking <sup>[F93]</sup>, and
  - (b) the references in paragraph 3(5) to naming the taxpayer are to making that statement and naming the parent undertaking.]
- (3) In relation to such a notice—
- (a) in paragraphs 3 and 4 (approval etc of notices and copying third party notices to taxpayer), the references to the taxpayer have effect as if they were references to the parent undertaking, but
  - (b) in paragraph 30(2) (no appeal in relation to taxpayer's statutory records), the reference to the taxpayer has effect as if it were a reference to the parent undertaking and each of its subsidiary undertakings.
- <sup>[F94]</sup>(4) Where a third party notice is given to the parent undertaking for the purpose of checking the tax position of more than one subsidiary undertaking—
- (a) paragraph 2(2) only requires the notice to state this, and
  - (b) the references in paragraph 3(5) to naming the taxpayer are to making that statement.
- (4A) In relation to such a notice—
- (a) in paragraph 3 (approval etc of notices), sub-paragraphs (1) and (3)(e) do not apply,
  - (b) paragraph 4(1) (copying third party notices to taxpayer) does not apply,
  - (c) <sup>[F95]</sup>paragraphs 21 and 21A (restrictions on giving taxpayer notice where taxpayer has made return) <sup>[F96]</sup>apply] as if the notice was a taxpayer notice or taxpayer notices given to each subsidiary undertaking (or, if the notice names the subsidiary undertakings to which it relates, to each of those undertakings),
  - (d) paragraph 30(1) (appeal) has effect as if it permitted an appeal on any grounds, and
  - (e) in paragraph 30(2) (no appeal in relation to taxpayer's statutory records), the reference to the taxpayer has effect as if it were a reference to the parent undertaking or any of its subsidiary undertakings.]
- (5) Where a notice is given under paragraph 5 to the parent undertaking for the purpose of checking the tax position of one or more subsidiary undertakings whose identities are not known to the officer giving <sup>[F97]</sup>—
- (a) sub-paragraphs (3) and (4) of that paragraph (approval of tribunal) have effect as if they permitted, but did not require, the officer to obtain the approval of the tribunal, and
  - (b) paragraph 31 (appeal) has effect as if it permitted an appeal on any grounds, but the parent undertaking may not appeal against a requirement in the notice to produce any document that forms part of the statutory records of the parent undertaking or any of its subsidiary undertakings.]
- <sup>F98</sup>(6) .....

*Status: Point in time view as at 16/11/2017.*

*Changes to legislation: Finance Act 2008, SCHEDULE 36 is up to date with all changes known to be in force on or before 01 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (7) In this paragraph “parent undertaking”, “subsidiary undertaking” and “undertaking” have the same meaning as in the Companies Acts (see sections 1161 and 1162 of, and Schedule 7 to, the Companies Act 2006 (c. 46)).

#### Textual Amendments

- F92** Words in Sch. 36 para. 35(2) substituted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 47 para. 10\(2\)\(a\)](#)  
**F93** Sch. 36 para. 35(2)(b) and word inserted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 47 para. 10\(2\)\(b\)](#)  
**F94** Sch. 36 para. 35(4) (4A) substituted for Sch. 36 para. 35(4) (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 47 para. 10\(3\)](#)  
**F95** Words in Sch. 36 para. 35(4A)(c) substituted (1.4.2010) by [Finance Act 2009 \(c. 10\)](#), s. 96(3), [Sch. 48 para. 12\(a\)](#); [S.I. 2009/3054](#), art. 2  
**F96** Word in Sch. 36 para. 35(4A)(c) substituted (1.4.2010) by [Finance Act 2009 \(c. 10\)](#), s. 96(3), [Sch. 48 para. 12\(b\)](#); [S.I. 2009/3054](#), art. 2  
**F97** Words in Sch. 36 para. 35(5) substituted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 47 para. 10\(4\)](#)  
**F98** Sch. 36 para. 35(6) omitted (21.7.2009) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 47 para. 10\(5\)](#)

#### Commencement Information

- I35** Sch. 36 para. 35 in force at 1.4.2009 by [S.I. 2009/404](#), art. 2

#### *Change of ownership of companies*

- 36 (1) Sub-paragraph (2) applies where it appears to the Commissioners that—
- there has been a change in the ownership of a company, and
  - in connection with that change a person (“the seller”) may be or become liable to be assessed and charged to corporation tax under [<sup>F99</sup>section 710 or 713 of CTA 2010].
- (2) Paragraph 21 (restrictions on giving taxpayer notice where taxpayer has made tax return) does not apply in relation to a taxpayer notice given to the seller.
- (3) [<sup>F100</sup>Chapter 7 of Part 14 of CTA 2010] applies for the purposes of determining when there has been a change in the ownership of a company.

#### Textual Amendments

- F99** Words in Sch. 36 para. 36(1)(b) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 582\(2\)\(a\)](#) (with Sch. 2)  
**F100** Words in Sch. 36 para. 36(3) substituted (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), [Sch. 1 para. 582\(2\)\(b\)](#) (with Sch. 2)

#### Commencement Information

- I36** Sch. 36 para. 36 in force at 1.4.2009 by [S.I. 2009/404](#), art. 2

#### *Partnerships*

- 37 (1) This paragraph applies where a business is carried on by two or more persons in partnership.
- [<sup>F101</sup>(2) Where, in respect of a chargeable period, any of the partners has—
- made a tax return under section 12AA of TMA 1970 (partnership returns), or

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- (b) made a claim or election in accordance with section 42(6)(b) of TMA 1970 (partnership claims and elections),  
paragraph 21 (restrictions where taxpayer has made tax return) has effect as if that return, claim or election had been made by each of the partners.]
- [<sup>F102</sup>(2A) Where, in respect of a transaction entered into as purchaser by or on behalf of the members of the partnership, any of the partners has—
- (a) delivered a land transaction return under Part 4 of FA 2003 (stamp duty land tax), or
- (b) made a claim under that Part of that Act,  
paragraph 21A (restrictions where taxpayer has delivered land transaction return) has effect as if that return had been delivered, or that claim had been made, by each of the partners.]
- [<sup>F103</sup>(2B) Where, in respect of a single-dwelling interest (see paragraph 21B(7)) to which one or more companies are or were entitled as members of a partnership, any member of the partnership has—
- (a) delivered an annual tax on enveloped dwellings return or a return of the adjusted chargeable amount under Part 3 of FA 2013, or
- (b) made a claim under that Part of that Act,  
paragraph 21B (restrictions where taxpayer has delivered return) has effect as if that return had been delivered, or that claim had been made, by each member of the partnership.]
- (3) Where a third party notice is given <sup>F104</sup>... for the purpose of checking the tax position of more than one of the partners (in their capacity as such), [<sup>F105</sup>—
- (a) paragraph 2(2)] only requires the notice to state this and give a name in which the partnership is registered for any purpose [<sup>F106</sup>, and
- (b) the references in paragraph 3(5) to naming the taxpayer are to making that statement and naming the partnership.]
- (4) In relation to such a notice [<sup>F107</sup>given to a person other than one of the partners]—
- (a) in paragraphs 3 and 4 (approval etc of notices and copying third party notices to taxpayer), the references to the taxpayer have effect as if they were references to at least one of the partners, and
- (b) in paragraph 30(2) (no appeal in relation to taxpayer's statutory records), the reference to the taxpayer has effect as if it were a reference to [<sup>F108</sup>any of the partners in the partnership].
- [<sup>F109</sup>(5) In relation to a third party notice given to one of the partners for the purpose of checking the tax position of one or more of the other partners (in their capacity as such)—
- (a) in paragraph 3 (approval etc of notices), sub-paragraphs (1) and (3)(e) do not apply,
- (b) paragraph 4(1) (copying third party notices to taxpayer) does not apply,
- (c) paragraph 30(1) (appeal) has effect as if it permitted an appeal on any grounds, and
- (d) in paragraph 30(2) (no appeal in relation to taxpayer's statutory records), the reference to the taxpayer has effect as if it were a reference to any of the partners in the partnership.]

*Status: Point in time view as at 16/11/2017.*

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- (6) Where a notice is given under paragraph 5 to one of the partners for the purpose of checking the tax position of one or more of the other partners whose identities are not known to the officer giving the notice [<sup>F110</sup>—
- (a) sub-paragraphs (3) and (4) of that paragraph (approval of tribunal) have effect as if they permitted, but did not require, the officer to obtain the approval of the tribunal, and
  - (b) paragraph 31 (appeal) has effect as if it permitted an appeal on any grounds, but the partner to whom the notice is given may not appeal against a requirement in the notice to produce any document that forms part of that partner's statutory records.]

<sup>F111</sup>(7) .....

#### Textual Amendments

- F101** Sch. 36 para. 37(2) substituted (21.7.2009) by Finance Act 2009 (c. 10), **Sch. 47 para. 11(2)**
- F102** Sch. 36 para. 37(2A) inserted (1.4.2010) by Finance Act 2009 (c. 10), s. 96(3), **Sch. 48 para. 13**; S.I. 2009/3054, art. 2
- F103** Sch. 36 para. 37(2B) inserted (17.7.2013) by Finance Act 2013 (c. 29), **Sch. 34 para. 4**
- F104** Words in Sch. 36 para. 37(3) omitted (21.7.2009) by virtue of Finance Act 2009 (c. 10), **Sch. 47 para. 11(3)(a)**
- F105** Words in Sch. 36 para. 37(3) substituted (21.7.2009) by Finance Act 2009 (c. 10), **Sch. 47 para. 11(3)(b)**
- F106** Sch. 36 para. 37(3)(b) and word inserted (21.7.2009) by Finance Act 2009 (c. 10), **Sch. 47 para. 11(3)(c)**
- F107** Words in Sch. 36 para. 37(4) inserted (21.7.2009) by Finance Act 2009 (c. 10), **Sch. 47 para. 11(4)(a)**
- F108** Words in Sch. 36 para. 37(4)(b) substituted (21.7.2009) by Finance Act 2009 (c. 10), **Sch. 47 para. 11(4)(b)**
- F109** Sch. 36 para. 37(5) substituted (21.7.2009) by Finance Act 2009 (c. 10), **Sch. 47 para. 11(5)**
- F110** Sch. 36 para. 37(6)(a)(b) substituted for words (21.7.2009) by Finance Act 2009 (c. 10), **Sch. 47 para. 11(6)**
- F111** Sch. 36 para. 37(7) omitted (21.7.2009) by virtue of Finance Act 2009 (c. 10), **Sch. 47 para. 11(7)**

#### Commencement Information

- I37** Sch. 36 para. 37 in force at 1.4.2009 by S.I. 2009/404, art. 2

### <sup>F112</sup>Information in connection with herd basis election

#### Textual Amendments

- F112** Sch. 36 paras. 37A, 37B and cross-headings inserted (21.7.2009) by Finance Act 2009 (c. 10), **Sch. 47 para. 12**

- 37A (1) This paragraph applies to a taxpayer notice given to a person carrying on a trade in relation to which a herd basis election is made if the notice refers only to information or documents that relate to—
- (a) the animals kept for the purposes of the trade, or
  - (b) the products of those animals.
- (2) Paragraph 21 (restrictions on giving taxpayer notice where taxpayer has made tax return) does not apply in relation to the notice.

*Status: Point in time view as at 16/11/2017.*

*Changes to legislation: Finance Act 2008, SCHEDULE 36 is up to date with all changes known to be in force on or before 01 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (3) “Herd basis election” means an election under Chapter 8 of Part 2 of ITTOIA 2005 or Chapter 8 of Part 3 of CTA 2009.

*Information from persons liable to counteraction of tax advantage*

- 37B (1) This paragraph applies to a taxpayer notice given to a person if—
- (a) it appears to an officer of Revenue and Customs that a counteraction provision may apply to the person by reason of one or more transactions, and
  - (b) the notice refers only to information or documents relating to the transaction (or, if there are two or more transactions, any of them).
- (2) Paragraph 21 (restrictions on giving taxpayer notice where taxpayer has made tax return) does not apply in relation to the notice.
- (3) “Counteraction provision” means—
- <sup>F113</sup>(a) . . . . .
  - (b) section 684 of ITA 2007 (person liable to counteraction of income tax advantage)]<sup>F114</sup>, or
  - (c) section 733 of CTA 2010 (company liable to counteraction of corporation tax advantage).]

**Textual Amendments**

- F113** Sch. 36 para. 37B(3)(a) repealed (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), Sch. 1 para. 582(3)(a), Sch. 3 Pt. 1 (with Sch. 2)
- F114** Sch. 36 para. 37B(3)(c) and word inserted (with effect in accordance with s. 1184(1) of the amending Act) by Corporation Tax Act 2010 (c. 4), s. 1184(1), Sch. 1 para. 582(3)(b) (with Sch. 2)

*Application to the Crown*

- 38 This Schedule (other than Part 8) applies to the Crown, but not to Her Majesty in Her private capacity (within the meaning of the Crown Proceedings Act 1947 (c. 44)).

**Commencement Information**

- I38** Sch. 36 para. 38 in force at 1.4.2009 by S.I. 2009/404, art. 2

**PART 7**

**PENALTIES**

**Modifications etc. (not altering text)**

- C83** Sch. 36 Pt. 7 applied (13.8.2009) by 2007 c. 11, Sch. 11 para. 2(7) (as substituted by The Finance Act 2009, Schedule 47 (Consequential Amendments) Order 2009 (S.I. 2009/2035), Sch. para. 53)
- C84** Sch. 36 Pt. 7 applied (1.4.2011) by 1979 c. 2, s. 118G(2) (as inserted by Finance (No. 3) Act 2010 (c. 33), s. 29(2), Sch. 13 para. 15(3); S.I. 2011/777, art. 2)
- C85** Sch. 36 Pt. 7 applied (with modifications) (14.10.2013) by S.I. 2006/208, reg. 5 (as inserted (E.W.S.) by The Registered Pension Schemes and Overseas Pension Schemes (Miscellaneous Amendments)

*Status: Point in time view as at 16/11/2017.*

*Changes to legislation: Finance Act 2008, SCHEDULE 36 is up to date with all changes known to be in force on or before 01 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- Regulations 2013 (S.I. 2013/2259), regs. 1, **21**) (as amended (6.4.2015) by The Overseas Pension Schemes (Miscellaneous Amendments) Regulations 2015 (S.I. 2015/673), regs. 1, **6(a)**)
- C86** Sch. 36 Pt. 7 modified (with effect in accordance with Sch. 3 Pt. 3 of the amending Act) by 2010 c. 4, s. **269DM(5)** (as inserted by Finance (No. 2) Act 2015 (c. 33), **Sch. 3 para. 1**)
- C87** Sch. 36 Pt. 7 modified (with effect in accordance with Sch. 3 Pt. 3 of the amending Act) by 2010 c. 8, s. **371UBA(5)** (as inserted by Finance (No. 2) Act 2015 (c. 33), **Sch. 3 para. 10(5)**)
- C88** Sch. 36 Pt. 7 applied (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by 2010 c. 8, **Sch. 7A para. 66(1)** (as inserted by Finance (No. 2) Act 2017 (c. 32), Sch. 5 para. 2 (with **Sch. 5 para. 28**))

<sup>F115</sup>... penalties [<sup>F116</sup>for failure to comply or obstruction]

#### Textual Amendments

- F115** Word in Sch. 36 para. 39 cross-heading omitted (21.7.2009) by virtue of Finance Act 2009 (c. 10), **Sch. 47 para. 13(3)(a)**
- F116** Words in Sch. 36 para. 39 cross-heading inserted (21.7.2009) by Finance Act 2009 (c. 10), **Sch. 47 para. 13(3)(b)**

- 39 (1) This paragraph applies to a person who—
- (a) fails to comply with an information notice, or
  - (b) deliberately obstructs an officer of Revenue and Customs in the course of an inspection under Part 2 of this Schedule that has been approved by the [<sup>F117</sup>tribunal].
- (2) [<sup>F118</sup>The person] is liable to a penalty of £300.
- (3) The reference in this paragraph to a person who fails to comply with an information notice includes a person who conceals, destroys or otherwise disposes of, or arranges for the concealment, destruction or disposal of, a document in breach of paragraph 42 or 43.

#### Textual Amendments

- F117** Word in Sch. 36 para. 39(1)(b) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), **Sch. 1 para. 471(2)**
- F118** Words in Sch. 36 para. 39(2) substituted (21.7.2009) by Finance Act 2009 (c. 10), **Sch. 47 para. 13(2)**

#### Modifications etc. (not altering text)

- C89** Sch. 36 para. 39(2) applied (20.3.2014) (with effect in accordance with Sch. 7 para. 5(1) of the amending Act) by 2004 c. 12, s. **153C(3)** (as inserted by Finance Act 2014 (c. 26), Sch. 7 paras. 3, **5(1)**)
- C90** Sch. 36 para. 39(2) applied (with effect in accordance with Sch. 7 para. 8(1) of the amending Act) by 2004 c. 12, s. **159C(3)** (as inserted by Finance Act 2014 (c. 26), Sch. 7 paras. 7, **8(3)**)

#### Commencement Information

- I39** Sch. 36 para. 39 in force at 1.4.2009 by S.I. 2009/404, art. 2

*Status: Point in time view as at 16/11/2017.*

*Changes to legislation: Finance Act 2008, SCHEDULE 36 is up to date with all changes known to be in force on or before 01 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### *Daily default penalties*

- 40 (1) This paragraph applies if the failure or obstruction mentioned in paragraph 39(1) continues after the date on which a penalty is imposed under that paragraph in respect of the failure or obstruction.
- (2) The person is liable to a further penalty or penalties not exceeding £60 for each subsequent day on which the failure or obstruction continues.

#### **Modifications etc. (not altering text)**

- C91** Sch. 36 para. 40 applied (20.3.2014) (with effect in accordance with Sch. 7 para. 5(1) of the amending Act) by 2004 c. 12, s. 153C(3) (as inserted by Finance Act 2014 (c. 26), Sch. 7 paras. 3, 5(1))
- C92** Sch. 36 para. 40 applied (with effect in accordance with Sch. 7 para. 8(1) of the amending Act) by 2004 c. 12, s. 159C(3) (as inserted by Finance Act 2014 (c. 26), Sch. 7 paras. 7, 8(3))

#### **Commencement Information**

- I40** Sch. 36 para. 40 in force at 1.4.2009 by S.I. 2009/404, art. 2

### *[<sup>F119</sup>Penalties for inaccurate information and documents*

#### **Textual Amendments**

- F119** Sch. 36 para. 40A and cross-heading inserted (21.7.2009) by Finance Act 2009 (c. 10), Sch. 47 para. 15

- 40A (1) This paragraph applies if—
- (a) in complying with an information notice, a person provides inaccurate information or produces a document that contains an inaccuracy, and
  - (b) condition [<sup>F120</sup>A, B or C] is met.
- (2) Condition A is that the inaccuracy is careless or deliberate.
- (3) An inaccuracy is careless if it is due to a failure by the person to take reasonable care.
- [ Condition B is that the person knows of the inaccuracy at the time the information is <sup>F121</sup>(3A) provided or the document produced but does not inform HMRC at that time.]
- (4) Condition [<sup>F122</sup>C] is that the person—
- (a) discovers the inaccuracy some time later, and
  - (b) fails to take reasonable steps to inform HMRC.
- (5) The person is liable to a penalty not exceeding £3,000.
- (6) Where the information or document contains more than one inaccuracy, a penalty is payable for each inaccuracy.]

#### **Textual Amendments**

- F120** Words in Sch. 36 para. 40A(1)(b) substituted (with effect in accordance with Sch. 24 para. 3(5) of the amending Act) by Finance Act 2011 (c. 11), Sch. 24 para. 3(2)
- F121** Sch. 36 para. 40A(3A) inserted (with effect in accordance with Sch. 24 para. 3(5) of the amending Act) by Finance Act 2011 (c. 11), Sch. 24 para. 3(3)

*Status: Point in time view as at 16/11/2017.*

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**F122** Word in Sch. 36 para. 40A(4) substituted (with effect in accordance with Sch. 24 para. 3(5) of the amending Act) by Finance Act 2011 (c. 11), Sch. 24 para. 3(4)

#### Modifications etc. (not altering text)

**C93** Sch. 36 para. 40A applied (20.3.2014) (with effect in accordance with Sch. 7 para. 5(1) of the amending Act) by 2004 c. 12, s. 153E(2) (as inserted by Finance Act 2014 (c. 26), Sch. 7 paras. 3, 5(1))

**C94** Sch. 36 para. 40A applied (with effect in accordance with Sch. 7 para. 8(1) of the amending Act) by 2004 c. 12, s. 159D(2) (as inserted by Finance Act 2014 (c. 26), Sch. 7 paras. 7, 8(3))

### *Power to change amount of<sup>F123</sup> ... penalties*

#### Textual Amendments

**F123** Words in Sch. 36 para. 41 cross-heading omitted (21.7.2009) by virtue of Finance Act 2009 (c. 10), Sch. 47 para. 16(5)

- 41 (1) If it appears to the Treasury that there has been a change in the value of money since the last relevant date, they may by regulations substitute for the sums for the time being specified in paragraphs 39(2) [<sup>F124</sup>, 40(2) and 40A(5)] such other sums as appear to them to be justified by the change.
- (2) In sub-paragraph (1) [<sup>F125</sup>, in relation to a specified sum,] “relevant date” means—
- (a) the date on which this Act is passed, and
  - (b) each date on which the power conferred by that sub-paragraph has been exercised [<sup>F126</sup>, in relation to that sum].
- (3) Regulations under this paragraph do not apply to [<sup>F127</sup>—
- (a)] any failure or obstruction which began before the date on which they come into force [<sup>F128</sup>, or
  - (b) an inaccuracy in any information or document provided to HMRC before that date.]

#### Textual Amendments

**F124** Words in Sch. 36 para. 41(1) substituted (21.7.2009) by Finance Act 2009 (c. 10), Sch. 47 para. 16(2)

**F125** Words in Sch. 36 para. 41(2) inserted (21.7.2009) by Finance Act 2009 (c. 10), Sch. 47 para. 16(3)(a)

**F126** Words in Sch. 36 para. 41(2)(b) inserted (21.7.2009) by Finance Act 2009 (c. 10), Sch. 47 para. 16(3)(b)

**F127** Word in Sch. 36 para. 41(3) inserted (21.7.2009) by Finance Act 2009 (c. 10), Sch. 47 para. 16(4)(a)

**F128** Sch. 36 para. 41(3)(b) and word inserted (21.7.2009) by Finance Act 2009 (c. 10), Sch. 47 para. 16(4)(b)

#### Commencement Information

**I41** Sch. 36 para. 41 in force at 1.4.2009 by S.I. 2009/404, art. 2

### *Concealing, destroying etc documents following information notice*

- 42 (1) A person must not conceal, destroy or otherwise dispose of, or arrange for the concealment, destruction or disposal of, a document that is the subject of an information notice addressed to the person (subject to sub-paragraphs (2) and (3)).



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- (2) Sub-paragraph (1) does not apply if the person acts after the document has been produced to an officer of Revenue and Customs in accordance with the information notice, unless an officer of Revenue and Customs has notified the person in writing that the document must continue to be available for inspection (and has not withdrawn the notification).
- (3) Sub-paragraph (1) does not apply, in a case to which paragraph 8(1) applies, if the person acts after the expiry of the period of 6 months beginning with the day on which a copy of the document was produced in accordance with that paragraph unless, before the expiry of that period, an officer of Revenue and Customs made a request for the original document under paragraph 8(2)(b).

**Modifications etc. (not altering text)**

- C95** Sch. 36 para. 42 applied (20.3.2014) (with effect in accordance with Sch. 7 para. 5(1) of the amending Act) by 2004 c. 12, s. 153A(3) (as inserted by Finance Act 2014 (c. 26), Sch. 7 paras. 3, 5(1))
- C96** Sch. 36 para. 42 applied (with effect in accordance with Sch. 7 para. 8(1) of the amending Act) by 2004 c. 12, s. 159A(2) (as inserted by Finance Act 2014 (c. 26), Sch. 7 paras. 7, 8(3))
- C97** Sch. 36 para. 42 applied (17.1.2017) by Savings (Government Contributions) Act 2017 (c. 2), s. 6(2)(3), Sch. 1 para. 10(4)
- C98** Sch. 36 para. 42 applied (17.1.2017) by Savings (Government Contributions) Act 2017 (c. 2), s. 6(2)(3), Sch. 2 para. 19(2)
- C99** Sch. 36 para. 42 applied (17.1.2017) by Savings (Government Contributions) Act 2017 (c. 2), s. 6(2)(3), Sch. 1 para. 6(3)

**Commencement Information**

- I42** Sch. 36 para. 42 in force at 1.4.2009 by S.I. 2009/404, art. 2

*Concealing, destroying etc documents following informal notification*

- 43 (1) A person must not conceal, destroy or otherwise dispose of, or arrange for the concealment, destruction or disposal of, a document if an officer of Revenue and Customs has informed the person that the document is, or is likely, to be the subject of an information notice addressed to that person (subject to sub-paragraph (2)).
- (2) Sub-paragraph (1) does not apply if the person acts after—
- (a) at least 6 months has expired since the person was, or was last, so informed, or
  - (b) an information notice has been given to the person requiring the document to be produced.

**Modifications etc. (not altering text)**

- C100** Sch. 36 para. 43 applied (20.3.2014) (with effect in accordance with Sch. 7 para. 5(1) of the amending Act) by 2004 c. 12, s. 153A(3) (as inserted by Finance Act 2014 (c. 26), Sch. 7 paras. 3, 5(1))
- C101** Sch. 36 para. 43 applied (with effect in accordance with Sch. 7 para. 8(1) of the amending Act) by 2004 c. 12, s. 159A(2) (as inserted by Finance Act 2014 (c. 26), Sch. 7 paras. 7, 8(3))
- C102** Sch. 36 para. 43 applied (17.1.2017) by Savings (Government Contributions) Act 2017 (c. 2), s. 6(2)(3), Sch. 1 para. 6(3)
- C103** Sch. 36 para. 43 applied (17.1.2017) by Savings (Government Contributions) Act 2017 (c. 2), s. 6(2)(3), Sch. 2 para. 19(2)

*Status: Point in time view as at 16/11/2017.*

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**C104** Sch. 36 para. 43 applied (17.1.2017) by Savings (Government Contributions) Act 2017 (c. 2), s. 6(2)(3), Sch. 1 para. 10(4)

**Commencement Information**

**I43** Sch. 36 para. 43 in force at 1.4.2009 by S.I. 2009/404, art. 2

*Failure to comply with time limit*

- 44 A failure by a person to do anything required to be done within a limited period of time does not give rise to liability to a penalty under paragraph 39 or 40 if the person did it within such further time, if any, as an officer of Revenue and Customs may have allowed.

**Modifications etc. (not altering text)**

- C105** Sch. 36 paras. 44-49 applied (with modifications) (21.7.2009) by Finance Act 2009 (c. 10), Sch. 49 para. 5(3) (with Sch. 49 para. 1)
- C106** Sch. 36 paras. 44-49 applied (20.3.2014) (with effect in accordance with Sch. 7 para. 5(1) of the amending Act) by 2004 c. 12, s. 153C(3) (as inserted by Finance Act 2014 (c. 26), Sch. 7 paras. 3, 5(1))
- C107** Sch. 36 paras. 44-49 applied (with effect in accordance with Sch. 7 para. 8(1) of the amending Act) by 2004 c. 12, s. 159C(3) (as inserted by Finance Act 2014 (c. 26), Sch. 7 paras. 7, 8(3))
- C108** Sch. 36 paras. 44-49 applied (with modifications) (17.1.2017) by Savings (Government Contributions) Act 2017 (c. 2), s. 6(2)(3), Sch. 1 para. 16(5)
- C109** Sch. 36 paras. 44-49 applied (17.1.2017) by Savings (Government Contributions) Act 2017 (c. 2), s. 6(2)(3), Sch. 2 para. 22(5)
- C110** Sch. 36 para. 44 applied (17.1.2017) by Savings (Government Contributions) Act 2017 (c. 2), s. 6(2)(3), Sch. 2 para. 12(2)

**Commencement Information**

**I44** Sch. 36 para. 44 in force at 1.4.2009 by S.I. 2009/404, art. 2

*Reasonable excuse*

- 45 (1) Liability to a penalty under paragraph 39 or 40 does not arise if the person satisfies HMRC or [<sup>F129</sup>(on an appeal notified to the tribunal) the tribunal] that there is a reasonable excuse for the failure or the obstruction of an officer of Revenue and Customs.
- (2) For the purposes of this paragraph—
- (a) an insufficiency of funds is not a reasonable excuse unless attributable to events outside the person's control,
  - (b) where the person relies on any other person to do anything, that is not a reasonable excuse unless the first person took reasonable care to avoid the failure or obstruction, and
  - (c) where the person had a reasonable excuse for the failure or obstruction but the excuse has ceased, the person is to be treated as having continued to have the excuse if the failure is remedied, or the obstruction stops, without unreasonable delay after the excuse ceased.

*Status: Point in time view as at 16/11/2017.*

*Changes to legislation: Finance Act 2008, SCHEDULE 36 is up to date with all changes known to be in force on or before 01 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### Textual Amendments

**F129** Words in Sch. 36 para. 45(1) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 471(12)**

### Modifications etc. (not altering text)

**C105** Sch. 36 paras. 44-49 applied (with modifications) (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), **Sch. 49 para. 5(3)** (with [Sch. 49 para. 1](#))

**C106** Sch. 36 paras. 44-49 applied (20.3.2014) (with effect in accordance with [Sch. 7 para. 5\(1\)](#) of the amending Act) by [2004 c. 12, s. 153C\(3\)](#) (as inserted by [Finance Act 2014 \(c. 26\)](#), [Sch. 7 paras. 3, 5\(1\)](#))

**C107** Sch. 36 paras. 44-49 applied (with effect in accordance with [Sch. 7 para. 8\(1\)](#) of the amending Act) by [2004 c. 12, s. 159C\(3\)](#) (as inserted by [Finance Act 2014 \(c. 26\)](#), [Sch. 7 paras. 7, 8\(3\)](#))

**C108** Sch. 36 paras. 44-49 applied (with modifications) (17.1.2017) by [Savings \(Government Contributions\) Act 2017 \(c. 2\)](#), s. 6(2)(3), **Sch. 1 para. 16(5)**

**C109** Sch. 36 paras. 44-49 applied (17.1.2017) by [Savings \(Government Contributions\) Act 2017 \(c. 2\)](#), s. 6(2)(3), **Sch. 2 para. 22(5)**

**C111** Sch. 36 para. 45 applied (17.1.2017) by [Savings \(Government Contributions\) Act 2017 \(c. 2\)](#), s. 6(2)(3), **Sch. 2 para. 12(2)**

### Commencement Information

**I45** Sch. 36 para. 45 in force at 1.4.2009 by [S.I. 2009/404](#), **art. 2**

## *F130 Assessment of ... penalty*

### Textual Amendments

**F130** Words in Sch. 36 para. 46 cross-heading omitted (21.7.2009) by virtue of [Finance Act 2009 \(c. 10\)](#), **Sch. 47 para. 17(5)**

- 46 (1) Where a person becomes liable for a penalty under paragraph 39 [<sup>F131</sup> 40 or 40A],  
...  
...  
(a) [<sup>F133</sup>HMRC may] assess the penalty, and  
(b) [<sup>F134</sup>if they do so, they must] notify the person.
- (2) An assessment of a penalty under paragraph 39 or 40 must be made [<sup>F135</sup>within the period of 12 months beginning with the date on which the person became liable to the penalty, subject to sub-paragraph (3)].
- [<sup>F136</sup>(3) In a case involving an information notice against which a person may appeal, an assessment of a penalty under paragraph 39 or 40 must be made within the period of 12 months beginning with the latest of the following—
- (a) the date on which the person became liable to the penalty,
  - (b) the end of the period in which notice of an appeal against the information notice could have been given, and
  - (c) if notice of such an appeal is given, the date on which the appeal is determined or withdrawn.
- (4) An assessment of a penalty under paragraph 40A must be made—

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- (a) within the period of 12 months beginning with the date on which the inaccuracy first came to the attention of an officer of Revenue and Customs, and
- (b) within the period of 6 years beginning with the date on which the person became liable to the penalty.]

#### Textual Amendments

- F131** Words in Sch. 36 para. 46(1) substituted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 47 para. 17\(2\)\(a\)](#)
- F132** Words in Sch. 36 para. 46(1) omitted (21.7.2009) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 47 para. 17\(2\)\(b\)](#)
- F133** Words in Sch. 36 para. 46(1)(a) inserted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 47 para. 17\(2\)\(c\)](#)
- F134** Words in Sch. 36 para. 46(1)(b) inserted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 47 para. 17\(2\)\(d\)](#)
- F135** Words in Sch. 36 para. 46(2) substituted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 47 para. 17\(3\)](#)
- F136** Sch. 36 para. 46(3) (4) substituted for Sch. 36 para. 46(3) (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 47 para. 17\(4\)](#)

#### Modifications etc. (not altering text)

- C105** Sch. 36 paras. 44-49 applied (with modifications) (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 49 para. 5\(3\)](#) (with [Sch. 49 para. 1](#))
- C106** Sch. 36 paras. 44-49 applied (20.3.2014) (with effect in accordance with [Sch. 7 para. 5\(1\)](#) of the amending Act) by [2004 c. 12, s. 153C\(3\)](#) (as inserted by [Finance Act 2014 \(c. 26\)](#), [Sch. 7 paras. 3, 5\(1\)](#))
- C107** Sch. 36 paras. 44-49 applied (with effect in accordance with [Sch. 7 para. 8\(1\)](#) of the amending Act) by [2004 c. 12, s. 159C\(3\)](#) (as inserted by [Finance Act 2014 \(c. 26\)](#), [Sch. 7 paras. 7, 8\(3\)](#))
- C108** Sch. 36 paras. 44-49 applied (with modifications) (17.1.2017) by [Savings \(Government Contributions\) Act 2017 \(c. 2\)](#), s. 6(2)(3), [Sch. 1 para. 16\(5\)](#)
- C109** Sch. 36 paras. 44-49 applied (17.1.2017) by [Savings \(Government Contributions\) Act 2017 \(c. 2\)](#), s. 6(2)(3), [Sch. 2 para. 22\(5\)](#)
- C112** Sch. 36 paras. 46-49 applied (20.3.2014) (with effect in accordance with [Sch. 7 para. 5\(1\)](#) of the amending Act) by [2004 c. 12, s. 153D\(8\)](#) (as inserted by [Finance Act 2014 \(c. 26\)](#), [Sch. 7 paras. 3, 5\(1\)](#))
- C113** Sch. 36 paras. 46-49 applied (20.3.2014) (with effect in accordance with [Sch. 7 para. 5\(1\)](#) of the amending Act) by [2004 c. 12, s. 153E\(2\)](#) (as inserted by [Finance Act 2014 \(c. 26\)](#), [Sch. 7 paras. 3, 5\(1\)](#))
- C114** Sch. 36 paras. 46-49 applied (with effect in accordance with [Sch. 7 para. 8\(1\)](#) of the amending Act) by [2004 c. 12, s. 159D\(2\)](#) (as inserted by [Finance Act 2014 \(c. 26\)](#), [Sch. 7 paras. 7, 8\(3\)](#))
- C115** Sch. 36 paras. 46-49 applied (with modifications) (17.1.2017) by [Savings \(Government Contributions\) Act 2017 \(c. 2\)](#), s. 6(2)(3), [Sch. 1 para. 17\(6\)](#)
- C116** Sch. 36 paras. 46-49 applied (17.1.2017) by [Savings \(Government Contributions\) Act 2017 \(c. 2\)](#), s. 6(2)(3), [Sch. 2 para. 20\(8\)](#)
- C117** Sch. 36 paras. 46-49 applied (17.1.2017) by [Savings \(Government Contributions\) Act 2017 \(c. 2\)](#), s. 6(2)(3), [Sch. 1 para. 5\(8\)](#)
- C118** Sch. 36 paras. 46-49 applied (17.1.2017) by [Savings \(Government Contributions\) Act 2017 \(c. 2\)](#), s. 6(2)(3), [Sch. 2 para. 23\(3\)](#)
- C119** Sch. 36 paras. 46-49 applied (17.1.2017) by [Savings \(Government Contributions\) Act 2017 \(c. 2\)](#), s. 6(2)(3), [Sch. 1 para. 12\(8\)](#)
- C120** Sch. 36 para. 46(1) applied (17.1.2017) by [Savings \(Government Contributions\) Act 2017 \(c. 2\)](#), s. 6(2)(3), [Sch. 2 para. 12\(2\)](#)

#### Commencement Information

- I46** Sch. 36 para. 46 in force at 1.4.2009 by [S.I. 2009/404](#), [art. 2](#)

*Status: Point in time view as at 16/11/2017.*

*Changes to legislation: Finance Act 2008, SCHEDULE 36 is up to date with all changes known to be in force on or before 01 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### *F137* Right to appeal against ... penalty

#### Textual Amendments

**F137** Words in Sch. 36 para. 47 cross-heading omitted (21.7.2009) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 47 para. 18\(3\)](#)

- 47 A person may appeal <sup>F138</sup>... against any of the following decisions of an officer of Revenue and Customs—
- (a) a decision that a penalty is payable by that person under paragraph 39 [<sup>F139</sup>, 40 or 40A], or
  - (b) a decision as to the amount of such a penalty.

#### Textual Amendments

**F138** Words in Sch. 36 para. 47 omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 1 para. 471\(13\)](#)

**F139** Words in Sch. 36 para. 47(a) substituted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 47 para. 18\(2\)](#)

#### Modifications etc. (not altering text)

**C105** Sch. 36 paras. 44-49 applied (with modifications) (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 49 para. 5\(3\)](#) (with [Sch. 49 para. 1](#))

**C106** Sch. 36 paras. 44-49 applied (20.3.2014) (with effect in accordance with [Sch. 7 para. 5\(1\)](#) of the amending Act) by [2004 c. 12, s. 153C\(3\)](#) (as inserted by [Finance Act 2014 \(c. 26\)](#), [Sch. 7 paras. 3, 5\(1\)](#))

**C107** Sch. 36 paras. 44-49 applied (with effect in accordance with [Sch. 7 para. 8\(1\)](#) of the amending Act) by [2004 c. 12, s. 159C\(3\)](#) (as inserted by [Finance Act 2014 \(c. 26\)](#), [Sch. 7 paras. 7, 8\(3\)](#))

**C108** Sch. 36 paras. 44-49 applied (with modifications) (17.1.2017) by [Savings \(Government Contributions\) Act 2017 \(c. 2\)](#), s. 6(2)(3), [Sch. 1 para. 16\(5\)](#)

**C109** Sch. 36 paras. 44-49 applied (17.1.2017) by [Savings \(Government Contributions\) Act 2017 \(c. 2\)](#), s. 6(2)(3), [Sch. 2 para. 22\(5\)](#)

**C112** Sch. 36 paras. 46-49 applied (20.3.2014) (with effect in accordance with [Sch. 7 para. 5\(1\)](#) of the amending Act) by [2004 c. 12, s. 153D\(8\)](#) (as inserted by [Finance Act 2014 \(c. 26\)](#), [Sch. 7 paras. 3, 5\(1\)](#))

**C113** Sch. 36 paras. 46-49 applied (20.3.2014) (with effect in accordance with [Sch. 7 para. 5\(1\)](#) of the amending Act) by [2004 c. 12, s. 153E\(2\)](#) (as inserted by [Finance Act 2014 \(c. 26\)](#), [Sch. 7 paras. 3, 5\(1\)](#))

**C114** Sch. 36 paras. 46-49 applied (with effect in accordance with [Sch. 7 para. 8\(1\)](#) of the amending Act) by [2004 c. 12, s. 159D\(2\)](#) (as inserted by [Finance Act 2014 \(c. 26\)](#), [Sch. 7 paras. 7, 8\(3\)](#))

**C115** Sch. 36 paras. 46-49 applied (with modifications) (17.1.2017) by [Savings \(Government Contributions\) Act 2017 \(c. 2\)](#), s. 6(2)(3), [Sch. 1 para. 17\(6\)](#)

**C116** Sch. 36 paras. 46-49 applied (17.1.2017) by [Savings \(Government Contributions\) Act 2017 \(c. 2\)](#), s. 6(2)(3), [Sch. 2 para. 20\(8\)](#)

**C117** Sch. 36 paras. 46-49 applied (17.1.2017) by [Savings \(Government Contributions\) Act 2017 \(c. 2\)](#), s. 6(2)(3), [Sch. 1 para. 5\(8\)](#)

**C118** Sch. 36 paras. 46-49 applied (17.1.2017) by [Savings \(Government Contributions\) Act 2017 \(c. 2\)](#), s. 6(2)(3), [Sch. 2 para. 23\(3\)](#)

**C119** Sch. 36 paras. 46-49 applied (17.1.2017) by [Savings \(Government Contributions\) Act 2017 \(c. 2\)](#), s. 6(2)(3), [Sch. 1 para. 12\(8\)](#)

**C121** Sch. 36 paras. 47-49 applied (17.1.2017) by [Savings \(Government Contributions\) Act 2017 \(c. 2\)](#), s. 6(2)(3), [Sch. 2 para. 12\(2\)](#)

#### Commencement Information

**I47** Sch. 36 para. 47 in force at 1.4.2009 by [S.I. 2009/404](#), [art. 2](#)

*Status: Point in time view as at 16/11/2017.*

*Changes to legislation: Finance Act 2008, SCHEDULE 36 is up to date with all changes known to be in force on or before 01 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

*F140 Procedure on appeal against ... penalty*

**Textual Amendments**

**F140** Words in Sch. 36 para. 48 cross-heading omitted (21.7.2009) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 47 para. 19](#)

- 48 (1) Notice of an appeal under paragraph 47 must be given—
- (a) in writing,
  - (b) before the end of the period of 30 days beginning with the date on which the notification under paragraph 46 was issued, and
  - (c) to HMRC.
- (2) Notice of an appeal under paragraph 47 must state the grounds of appeal.
- (3) On an appeal under paragraph 47(a) [<sup>F141</sup>that is notified to the tribunal, the tribunal] may confirm or cancel the decision.
- (4) On an appeal under paragraph 47(b) [<sup>F141</sup>that is notified to the tribunal, the tribunal] may—
- (a) confirm the decision, or
  - (b) substitute for the decision another decision that the officer of Revenue and Customs had power to make.
- (5) Subject to this paragraph and paragraph 49, the provisions of Part 5 of TMA 1970 relating to appeals have effect in relation to appeals under this Part of this Schedule as they have effect in relation to an appeal against an assessment to income tax.

**Textual Amendments**

**F141** Words in Sch. 36 para. 48(3)(4) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), [Sch. 1 para. 471\(14\)](#)

**Modifications etc. (not altering text)**

- C105** Sch. 36 paras. 44-49 applied (with modifications) (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 49 para. 5\(3\)](#) (with [Sch. 49 para. 1](#))
- C106** Sch. 36 paras. 44-49 applied (20.3.2014) (with effect in accordance with [Sch. 7 para. 5\(1\)](#) of the amending Act) by [2004 c. 12, s. 153C\(3\)](#) (as inserted by [Finance Act 2014 \(c. 26\)](#), [Sch. 7 paras. 3, 5\(1\)](#))
- C107** Sch. 36 paras. 44-49 applied (with effect in accordance with [Sch. 7 para. 8\(1\)](#) of the amending Act) by [2004 c. 12, s. 159C\(3\)](#) (as inserted by [Finance Act 2014 \(c. 26\)](#), [Sch. 7 paras. 7, 8\(3\)](#))
- C108** Sch. 36 paras. 44-49 applied (with modifications) (17.1.2017) by [Savings \(Government Contributions\) Act 2017 \(c. 2\)](#), s. 6(2)(3), [Sch. 1 para. 16\(5\)](#)
- C109** Sch. 36 paras. 44-49 applied (17.1.2017) by [Savings \(Government Contributions\) Act 2017 \(c. 2\)](#), s. 6(2)(3), [Sch. 2 para. 22\(5\)](#)
- C112** Sch. 36 paras. 46-49 applied (20.3.2014) (with effect in accordance with [Sch. 7 para. 5\(1\)](#) of the amending Act) by [2004 c. 12, s. 153D\(8\)](#) (as inserted by [Finance Act 2014 \(c. 26\)](#), [Sch. 7 paras. 3, 5\(1\)](#))
- C113** Sch. 36 paras. 46-49 applied (20.3.2014) (with effect in accordance with [Sch. 7 para. 5\(1\)](#) of the amending Act) by [2004 c. 12, s. 153E\(2\)](#) (as inserted by [Finance Act 2014 \(c. 26\)](#), [Sch. 7 paras. 3, 5\(1\)](#))
- C114** Sch. 36 paras. 46-49 applied (with effect in accordance with [Sch. 7 para. 8\(1\)](#) of the amending Act) by [2004 c. 12, s. 159D\(2\)](#) (as inserted by [Finance Act 2014 \(c. 26\)](#), [Sch. 7 paras. 7, 8\(3\)](#))
- C115** Sch. 36 paras. 46-49 applied (with modifications) (17.1.2017) by [Savings \(Government Contributions\) Act 2017 \(c. 2\)](#), s. 6(2)(3), [Sch. 1 para. 17\(6\)](#)

*Status: Point in time view as at 16/11/2017.*

*Changes to legislation: Finance Act 2008, SCHEDULE 36 is up to date with all changes known to be in force on or before 01 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- C116** Sch. 36 paras. 46-49 applied (17.1.2017) by Savings (Government Contributions) Act 2017 (c. 2), s. 6(2)(3), **Sch. 2 para. 20(8)**
- C117** Sch. 36 paras. 46-49 applied (17.1.2017) by Savings (Government Contributions) Act 2017 (c. 2), s. 6(2)(3), **Sch. 1 para. 5(8)**
- C118** Sch. 36 paras. 46-49 applied (17.1.2017) by Savings (Government Contributions) Act 2017 (c. 2), s. 6(2)(3), **Sch. 2 para. 23(3)**
- C119** Sch. 36 paras. 46-49 applied (17.1.2017) by Savings (Government Contributions) Act 2017 (c. 2), s. 6(2)(3), **Sch. 1 para. 12(8)**
- C121** Sch. 36 paras. 47-49 applied (17.1.2017) by Savings (Government Contributions) Act 2017 (c. 2), s. 6(2)(3), **Sch. 2 para. 12(2)**

#### Commencement Information

- I48** Sch. 36 para. 48 in force at 1.4.2009 by S.I. 2009/404, **art. 2**

### *<sup>F142</sup>Enforcement of ... penalty*

#### Textual Amendments

- F142** Words in Sch. 36 para. 49 cross-heading omitted (21.7.2009) by virtue of Finance Act 2009 (c. 10), **Sch. 47 para. 20(4)**

- 49 (1) A penalty under paragraph 39 [<sup>F143</sup>, 40 or 40A] must be paid—
- (a) before the end of the period of 30 days beginning with the date on which the notification under paragraph 46 was issued, or
  - (b) if a notice of an appeal against the penalty is given, before the end of the period of 30 days beginning with the date on which the appeal is determined or withdrawn.
- (2) A penalty under paragraph 39 [<sup>F144</sup>, 40 or 40A] may be enforced as if it were income tax charged in an assessment and due and payable.

#### Textual Amendments

- F143** Words in Sch. 36 para. 49(1) substituted (21.7.2009) by Finance Act 2009 (c. 10), **Sch. 47 para. 20(2)**
- F144** Words in Sch. 36 para. 49(2) substituted (21.7.2009) by Finance Act 2009 (c. 10), **Sch. 47 para. 20(3)**

#### Modifications etc. (not altering text)

- C105** Sch. 36 paras. 44-49 applied (with modifications) (21.7.2009) by Finance Act 2009 (c. 10), **Sch. 49 para. 5(3)** (with **Sch. 49 para. 1**)
- C106** Sch. 36 paras. 44-49 applied (20.3.2014) (with effect in accordance with **Sch. 7 para. 5(1)** of the amending Act) by 2004 c. 12, **s. 153C(3)** (as inserted by Finance Act 2014 (c. 26), **Sch. 7 paras. 3, 5(1)**)
- C107** Sch. 36 paras. 44-49 applied (with effect in accordance with **Sch. 7 para. 8(1)** of the amending Act) by 2004 c. 12, **s. 159C(3)** (as inserted by Finance Act 2014 (c. 26), **Sch. 7 paras. 7, 8(3)**)
- C108** Sch. 36 paras. 44-49 applied (with modifications) (17.1.2017) by Savings (Government Contributions) Act 2017 (c. 2), s. 6(2)(3), **Sch. 1 para. 16(5)**
- C109** Sch. 36 paras. 44-49 applied (17.1.2017) by Savings (Government Contributions) Act 2017 (c. 2), s. 6(2)(3), **Sch. 2 para. 22(5)**
- C112** Sch. 36 paras. 46-49 applied (20.3.2014) (with effect in accordance with **Sch. 7 para. 5(1)** of the amending Act) by 2004 c. 12, **s. 153D(8)** (as inserted by Finance Act 2014 (c. 26), **Sch. 7 paras. 3, 5(1)**)
- C113** Sch. 36 paras. 46-49 applied (20.3.2014) (with effect in accordance with **Sch. 7 para. 5(1)** of the amending Act) by 2004 c. 12, **s. 153E(2)** (as inserted by Finance Act 2014 (c. 26), **Sch. 7 paras. 3, 5(1)**)

*Status: Point in time view as at 16/11/2017.*

*Changes to legislation: Finance Act 2008, SCHEDULE 36 is up to date with all changes known to be in force on or before 01 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- C114** Sch. 36 paras. 46-49 applied (with effect in accordance with Sch. 7 para. 8(1) of the amending Act) by 2004 c. 12, s. 159D(2) (as inserted by Finance Act 2014 (c. 26), Sch. 7 paras. 7, 8(3))
- C115** Sch. 36 paras. 46-49 applied (with modifications) (17.1.2017) by Savings (Government Contributions) Act 2017 (c. 2), s. 6(2)(3), Sch. 1 para. 17(6)
- C116** Sch. 36 paras. 46-49 applied (17.1.2017) by Savings (Government Contributions) Act 2017 (c. 2), s. 6(2)(3), Sch. 2 para. 20(8)
- C117** Sch. 36 paras. 46-49 applied (17.1.2017) by Savings (Government Contributions) Act 2017 (c. 2), s. 6(2)(3), Sch. 1 para. 5(8)
- C118** Sch. 36 paras. 46-49 applied (17.1.2017) by Savings (Government Contributions) Act 2017 (c. 2), s. 6(2)(3), Sch. 2 para. 23(3)
- C119** Sch. 36 paras. 46-49 applied (17.1.2017) by Savings (Government Contributions) Act 2017 (c. 2), s. 6(2)(3), Sch. 1 para. 12(8)
- C121** Sch. 36 paras. 47-49 applied (17.1.2017) by Savings (Government Contributions) Act 2017 (c. 2), s. 6(2)(3), Sch. 2 para. 12(2)

#### Commencement Information

- I49** Sch. 36 para. 49 in force at 1.4.2009 by S.I. 2009/404, art. 2

#### <sup>F145</sup>Increased daily default penalty

#### Textual Amendments

- F145** Sch. 36 paras. 49A-49C and cross-heading inserted (with effect in accordance with Sch. 24 para. 4(2) of the amending Act) by Finance Act 2011 (c. 11), Sch. 24 para. 4(1)

- 49A (1) This paragraph applies if—
- (a) a penalty under paragraph 40 is assessed under paragraph 46 in respect of a person's failure to comply with a notice under paragraph 5,
  - (b) the failure continues for more than 30 days beginning with the date on which notification of that assessment was issued, and
  - (c) the person has been told that an application may be made under this paragraph for an increased daily penalty to be imposed.
- (2) If this paragraph applies, an officer of Revenue and Customs may make an application to the tribunal for an increased daily penalty to be imposed on the person.
- (3) If the tribunal decides that an increased daily penalty should be imposed, then for each applicable day (see paragraph 49B) on which the failure continues—
- (a) the person is not liable to a penalty under paragraph 40 in respect of the failure, and
  - (b) the person is liable instead to a penalty under this paragraph of an amount determined by the tribunal.
- (4) The tribunal may not determine an amount exceeding £1,000 for each applicable day.
- (5) But subject to that, in determining the amount the tribunal must have regard to—
- (a) the likely cost to the person of complying with the notice,
  - (b) any benefits to the person of not complying with it, and
  - (c) any benefits to anyone else resulting from the person's non-compliance.
- (6) Paragraph 41 applies in relation to the sum specified in sub-paragraph (4) as it applies in relation to the sums mentioned in paragraph 41(1).



*Status: Point in time view as at 16/11/2017.*

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- 49B (1) If a person becomes liable to a penalty under paragraph 49A, HMRC must notify the person.
- (2) The notification must specify the day from which the increased penalty is to apply.
- (3) That day and any subsequent day is an “applicable day” for the purposes of paragraph 49A(3).
- 49C (1) A penalty under paragraph 49A must be paid before the end of the period of 30 days beginning with the date on which the notification under paragraph 49B is issued.
- (2) A penalty under paragraph 49A may be enforced as if it were income tax charged in an assessment and due and payable.]

*Tax-related penalty*

- 50 (1) This paragraph applies where—
- (a) a person becomes liable to a penalty under paragraph 39,
  - (b) the failure or obstruction continues after a penalty is imposed under that paragraph,
  - (c) an officer of Revenue and Customs has reason to believe that, as a result of the failure or obstruction, the amount of tax that the person has paid, or is likely to pay, is significantly less than it would otherwise have been,
  - (d) before the end of the period of 12 months beginning with the relevant date<sup>F146</sup> ..., an officer of Revenue and Customs makes an application to the Upper Tribunal for an additional penalty to be imposed on the person, and
  - (e) the Upper Tribunal decides that it is appropriate for an additional penalty to be imposed.
- (2) The person is liable to a penalty of an amount decided by the Upper Tribunal.
- (3) In deciding the amount of the penalty, the Upper Tribunal must have regard to the amount of tax which has not been, or is not likely to be, paid by the person.
- (4) Where a person becomes liable to a penalty under this paragraph, HMRC must notify the person.
- (5) Any penalty under this paragraph is in addition to the penalty or penalties under paragraph 39 or 40.
- (6) In the application of the following provisions, no account shall be taken of a penalty under this paragraph—
- (a) section 97A of TMA 1970 (multiple penalties),
  - (b) paragraph 12(2) of Schedule 24 to FA 2007 (interaction with other penalties), and
  - (c) paragraph 15(1) of Schedule 41 (interaction with other penalties).
- [<sup>F147</sup>(7) In sub-paragraph (1)(d) “the relevant date” means—
- (a) in a case involving an information notice against which a person may appeal, the latest of—
    - (i) the date on which the person became liable to the penalty under paragraph 39,
    - (ii) the end of the period in which notice of an appeal against the information notice could have been given, and

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- (iii) if notice of such an appeal is given, the date on which the appeal is determined or withdrawn, and
- (b) in any other case, the date on which the person became liable to the penalty under paragraph 39.]

#### Textual Amendments

- F146** Words in [Sch. 36 para. 50\(1\)\(d\)](#) omitted (with effect in accordance with [Sch. 24 para. 5\(4\)](#) of the amending Act) by virtue of [Finance Act 2011 \(c. 11\)](#), [Sch. 24 para. 5\(2\)](#)
- F147** [Sch. 36 para. 50\(7\)](#) inserted (with effect in accordance with [Sch. 24 para. 5\(4\)](#) of the amending Act) by [Finance Act 2011 \(c. 11\)](#), [Sch. 24 para. 5\(3\)](#)

#### Commencement Information

- I50** [Sch. 36 para. 50](#) in force at 1.4.2009 by [S.I. 2009/404](#), [art. 2](#)

#### *Enforcement of tax-related penalty*

- 51 (1) A penalty under paragraph 50 must be paid before the end of the period of 30 days beginning with the date on which the notification of the penalty is issued.
- (2) A penalty under paragraph 50 may be enforced as if it were income tax charged in an assessment and due and payable.

#### Commencement Information

- I51** [Sch. 36 para. 51](#) in force at 1.4.2009 by [S.I. 2009/404](#), [art. 2](#)

#### *Double jeopardy*

- 52 A person is not liable to a penalty under this Schedule in respect of anything in respect of which the person has been convicted of an offence.

#### Modifications etc. (not altering text)

- C122** [Sch. 36 para. 52](#) applied (with modifications) (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 49 para. 5\(3\)](#) (with [Sch. 49 para. 1](#))
- C123** [Sch. 36 para. 52](#) applied (with modifications) (17.1.2017) by [Savings \(Government Contributions\) Act 2017 \(c. 2\)](#), s. 6(2)(3), [Sch. 1 para. 17\(6\)](#)
- C124** [Sch. 36 para. 52](#) applied (17.1.2017) by [Savings \(Government Contributions\) Act 2017 \(c. 2\)](#), s. 6(2)(3), [Sch. 2 para. 22\(5\)](#)
- C125** [Sch. 36 para. 52](#) applied (17.1.2017) by [Savings \(Government Contributions\) Act 2017 \(c. 2\)](#), s. 6(2)(3), [Sch. 2 para. 20\(8\)](#)
- C126** [Sch. 36 para. 52](#) applied (17.1.2017) by [Savings \(Government Contributions\) Act 2017 \(c. 2\)](#), s. 6(2)(3), [Sch. 2 para. 23\(3\)](#)
- C127** [Sch. 36 para. 52](#) applied (17.1.2017) by [Savings \(Government Contributions\) Act 2017 \(c. 2\)](#), s. 6(2)(3), [Sch. 1 para. 12\(8\)](#)
- C128** [Sch. 36 para. 52](#) applied (with modifications) (17.1.2017) by [Savings \(Government Contributions\) Act 2017 \(c. 2\)](#), s. 6(2)(3), [Sch. 1 para. 16\(5\)](#)
- C129** [Sch. 36 para. 52](#) applied (17.1.2017) by [Savings \(Government Contributions\) Act 2017 \(c. 2\)](#), s. 6(2)(3), [Sch. 1 para. 5\(8\)](#)

*Status: Point in time view as at 16/11/2017.*

*Changes to legislation: Finance Act 2008, SCHEDULE 36 is up to date with all changes known to be in force on or before 01 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

**C130** Sch. 36 para. 52 applied (17.1.2017) by Savings (Government Contributions) Act 2017 (c. 2), s. 6(2)(3), Sch. 2 para. 12(2)

#### Commencement Information

**I52** Sch. 36 para. 52 in force at 1.4.2009 by S.I. 2009/404, art. 2

## PART 8

### OFFENCE

#### Modifications etc. (not altering text)

**C131** Sch. 36 Pt. 8 applied (1.4.2011) by 1979 c. 2, s. 118G(3) (as inserted by Finance (No. 3) Act 2010 (c. 33), s. 29(2), Sch. 13 para. 15(3); S.I. 2011/777, art. 2)

**C132** Sch. 36 Pt. 8 applied (with effect in accordance with Sch. 5 para. 25(1)(2) of the amending Act) by 2010 c. 8, Sch. 7A para. 66(1) (as inserted by Finance (No. 2) Act 2017 (c. 32), Sch. 5 para. 2 (with Sch. 5 para. 28))

#### *Concealing etc documents following information notice*

- 53 (1) A person is guilty of an offence (subject to sub-paragraphs (2) and (3)) if—
- the person is required to produce a document by an information notice,
  - the <sup>F148</sup>[tribunal] approved the giving of the notice in accordance with paragraph 3 or 5, and
  - the person conceals, destroys or otherwise disposes of, or arranges for the concealment, destruction or disposal of, that document.
- (2) Sub-paragraph (1) does not apply if the person acts after the document has been produced to an officer of Revenue and Customs in accordance with the information notice, unless an officer of Revenue and Customs has notified the person in writing that the document must continue to be available for inspection (and has not withdrawn the notification).
- (3) Sub-paragraph (1) does not apply, in a case to which paragraph 8(1) applies, if the person acts after the expiry of the period of 6 months beginning with the day on which a copy of the document was so produced unless, before the expiry of that period, an officer of Revenue and Customs made a request for the original document under paragraph 8(2)(b).

#### Textual Amendments

**F148** Word in Sch. 36 para. 53(1)(b) substituted (1.4.2009) by The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56), art. 1(2), Sch. 1 para. 471(2)

#### Commencement Information

**I53** Sch. 36 para. 53 in force at 1.4.2009 by S.I. 2009/404, art. 2

*Status: Point in time view as at 16/11/2017.*

*Changes to legislation: Finance Act 2008, SCHEDULE 36 is up to date with all changes known to be in force on or before 01 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

*Concealing etc documents following informal notification*

- 54 (1) A person is also guilty of an offence (subject to sub-paragraph (2)) if the person conceals, destroys or otherwise disposes of, or arranges for the concealment, destruction or disposal of a document after the person has been informed by an officer of Revenue and Customs in writing that—
- (a) the document is, or is likely, to be the subject of an information notice addressed to that person, and
  - (b) an officer of Revenue and Customs intends to seek the approval of the [<sup>F149</sup>tribunal] to the giving of the notice under paragraph 3 or 5 in respect of the document.
- (2) A person is not guilty of an offence under this paragraph if the person acts after—
- (a) at least 6 months has expired since the person was, or was last, so informed, or
  - (b) an information notice has been given to the person requiring the document to be produced.

**Textual Amendments**

**F149** Word in Sch. 36 para. 54(1)(b) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 471(2)**

**Commencement Information**

**I54** Sch. 36 para. 54 in force at 1.4.2009 by [S.I. 2009/404](#), **art. 2**

*Fine or imprisonment*

- 55 A person who is guilty of an offence under this Part of this Schedule is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum, and
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.

**Commencement Information**

**I55** Sch. 36 para. 55 in force at 1.4.2009 by [S.I. 2009/404](#), **art. 2**

**[<sup>F150</sup>PART 9**

MISCELLANEOUS PROVISIONS AND INTERPRETATION

**Textual Amendments**

**F150** Words in Sch. 36 para. 40 cross-heading inserted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), **Sch. 47 para. 14**

*Status: Point in time view as at 16/11/2017.*

*Changes to legislation: Finance Act 2008, SCHEDULE 36 is up to date with all changes known to be in force on or before 01 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### *Application of provisions of TMA 1970*

- 56 Subject to the provisions of this Schedule, the following provisions of TMA 1970 apply for the purposes of this Schedule as they apply for the purposes of the Taxes Acts—
- (a) section 108 (responsibility of company officers),
  - (b) section 114 (want of form), and
  - (c) section 115 (delivery and service of documents).

#### **Modifications etc. (not altering text)**

**C133** Sch. 36 para. 56 applied (with effect in accordance with [Sch. 5 para. 25\(1\)\(2\)](#) of the amending Act) by [2010 c. 8, Sch. 7A para. 66\(1\)](#) (as inserted by [Finance \(No. 2\) Act 2017 \(c. 32\), Sch. 5 para. 2](#) (with [Sch. 5 para. 28](#)))

#### **Commencement Information**

**I56** Sch. 36 para. 56 in force at 1.4.2009 by [S.I. 2009/404, art. 2](#)

### *Regulations under this Schedule*

- 57 (1) Regulations made by the Commissioners or the Treasury under this Schedule are to be made by statutory instrument.
- (2) A statutory instrument containing regulations under this Schedule is subject to annulment in pursuance of a resolution of the House of Commons.

#### **Commencement Information**

**I57** Sch. 36 para. 57 in force at 1.4.2009 by [S.I. 2009/404, art. 2](#)

### *General interpretation*

- 58 In this Schedule—
- “checking” includes carrying out an investigation or enquiry of any kind,
  - “the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs,
  - “document” includes a part of a document (except where the context otherwise requires),
  - “enactment” includes subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30)),
  - “HMRC” means Her Majesty’s Revenue and Customs,
  - “premises” includes—
    - (a) any building or structure,
    - (b) any land, and
    - (c) any means of transport,
  - “the Taxes Acts” means—
    - (a) TMA 1970,
    - (b) the Tax Acts, and
    - (c) TCGA 1992 and all other enactments relating to capital gains tax,<sup>F151</sup> ...

*Status: Point in time view as at 16/11/2017.*

*Changes to legislation: Finance Act 2008, SCHEDULE 36 is up to date with all changes known to be in force on or before 01 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

“taxpayer”, in relation to a taxpayer notice or a third party notice, has the meaning given in paragraph 1(1) or 2(1) (as appropriate) [<sup>F152</sup>, and] .

[<sup>F153</sup>“tribunal” means the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal.]

#### Textual Amendments

**F151** Word in Sch. 36 para. 58 omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 471(15)(a)**

**F152** Word in Sch. 36 para. 58 inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 471(15)(b)**

**F153** Words in Sch. 36 para. 58 inserted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 471(15)(c)**

#### Commencement Information

**I58** Sch. 36 para. 58 in force at 1.4.2009 by [S.I. 2009/404](#), **art. 2**

#### *Authorised officer of Revenue and Customs*

- 59 A reference in a provision of this Schedule to an authorised officer of Revenue and Customs is a reference to an officer of Revenue and Customs who is, or is a member of a class of officers who are, authorised by the Commissioners for the purpose of that provision.

#### Commencement Information

**I59** Sch. 36 para. 59 in force at 1.4.2009 by [S.I. 2009/404](#), **art. 2**

#### *Business*

- 60 (1) In this Schedule (subject to regulations under this paragraph), references to carrying on a business include—
- the letting of property,
  - the activities of a charity, and
  - the activities of a government department, a local authority, a local authority association and any other public authority.
- (2) In sub-paragraph (1)—
- <sup>F154</sup> ...
- “local authority” has the meaning given in section 999 of ITA 2007, and “local authority association” has the meaning given in section 1000 of that Act.
- (3) The Commissioners may by regulations provide that for the purposes of this Schedule—
- the carrying on of an activity specified in the regulations, or
  - the carrying on of such an activity (or any activity) by a person specified in the regulations,
- is or is not to be treated as the carrying on of a business.

*Status: Point in time view as at 16/11/2017.*

**Changes to legislation:** Finance Act 2008, SCHEDULE 36 is up to date with all changes known to be in force on or before 01 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

#### Textual Amendments

**F154** Words in Sch. 36 para. 60(2) omitted (1.4.2012) by virtue of Finance Act 2010 (c. 13), Sch. 6 paras. 24, 34(2); S.I. 2012/736, art. 19

#### Commencement Information

**I60** Sch. 36 para. 60 in force at 1.4.2009 by S.I. 2009/404, art. 2

#### Chargeable period

- 61 In this Schedule “chargeable period” means—
- (a) in relation to income tax or capital gains tax, a tax year, and
  - (b) in relation to corporation tax, an accounting period.

#### Commencement Information

**I61** Sch. 36 para. 61 in force at 1.4.2009 by S.I. 2009/404, art. 2

#### <sup>F155</sup>Involved third parties

#### Textual Amendments

**F155** Sch. 36 para. 61A and cross-heading inserted (1.4.2010) by Finance Act 2009 (c. 10), s. 96(3), Sch. 48 para. 14; S.I. 2009/3054, art. 2

- 61A (1) In this Schedule “involved third party” means a person described in the first column of the Table below.
- (2) In this Schedule, in relation to an involved third party, <sup>F156</sup>... “relevant document” and “relevant tax” have the meaning given in the corresponding entries in that Table.

	<i>Involved third party</i>	<i>Relevant</i> <i><sup>F157</sup></i> <i>... documents</i>	<i>Relevant tax</i>
1.	A body approved by an officer of Revenue and Customs for the purpose of paying donations within the meaning of Part 12 of ITEPA 2003 (donations to charity: payroll giving) (see section 714 of that Act)	[ <sup>F158</sup> Documents] relating to the donations	Income tax

*Status: Point in time view as at 16/11/2017.*

*Changes to legislation: Finance Act 2008, SCHEDULE 36 is up to date with all changes known to be in force on or before 01 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

2.	A plan manager (see section 696 of ITTOIA 2005 (managers of individual investment plans))	[ <sup>F158</sup> Documents] relating to the plan, including investments which are or have been held under the plan	Income tax
3.	An account provider in relation to a child trust fund (as defined in section 3 of the Child Trust Funds Act 2004)	[ <sup>F158</sup> Documents] relating to the fund, including investments which are or have been held under the fund	Income tax
4.	A person who is or has been registered as a managing agent at Lloyd's in relation to a syndicate of underwriting members of Lloyd's	[ <sup>F158</sup> Documents] relating to, and to the activities of, the syndicate	Income tax Capital gains tax Corporation tax
5.	A person involved (in any capacity) in an insurance business (as defined for the purposes of Part 3 of FA 1994)	[ <sup>F158</sup> Documents] relating to contracts of insurance entered into in the course of the business	Insurance premium tax
6.	A person who makes arrangements for persons to enter into contracts of insurance	[ <sup>F158</sup> Documents] relating to the contracts	Insurance premium tax
7.	A person who— (a) is concerned in a business that is not an insurance business (as defined for the purposes of Part 3 of FA 1994), and (b) has been involved in the entry into a contract	[ <sup>F158</sup> Documents] relating to the contracts	Insurance premium tax



*Status: Point in time view as at 16/11/2017.*

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	of insurance providing cover for any matter associated with that business		
8.	A person who, in relation to a charge to stamp duty reserve tax on an agreement, transfer, issue, appropriation or surrender, is an accountable person (as defined in regulation 2 of the Stamp Duty Reserve Tax Regulations S.I. 1986/1711 (as amended from time to time))	[ <sup>F158</sup> Documents] relating to the agreement, transfer, issue, appropriation or surrender	Stamp duty reserve tax
9.	A responsible person in relation to an oil field (as defined for the purposes of Part 1 of OTA 1975)	[ <sup>F158</sup> Documents] relating to the oil field	Petroleum revenue tax
10.	A person involved (in any capacity) in subjecting aggregate to exploitation in the United Kingdom (as defined for the purposes of Part 2 of FA 2001) or in connected activities	[ <sup>F158</sup> Documents] relating to matters in which the person is or has been involved	Aggregates levy
11.	A person involved (in any capacity) in making or receiving [ <sup>F159</sup> supplies of] taxable commodities (as defined for the purposes of Schedule 6	[ <sup>F158</sup> Documents] relating to matters in which the person is or has been involved	Climate change levy

*Status: Point in time view as at 16/11/2017.*

*Changes to legislation: Finance Act 2008, SCHEDULE 36 is up to date with all changes known to be in force on or before 01 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

	to FA 2000) or in connected activities		
12.	A person involved (in any capacity) with any landfill disposal (as defined for the purposes of Part 3 of FA 1996)	[ <sup>F158</sup> Documents] relating to the disposal	Landfill tax]

#### Textual Amendments

- F156** Words in Sch. 36 para. 61A(2) omitted (with effect in accordance with Sch. 23 para. 65 of the amending Act) by virtue of Finance Act 2011 (c. 11), Sch. 23 paras. 62(3)(a), 65(1)(a) (with Sch. 23 paras. 50, 65(1)(b))
- F157** Words in Sch. 36 para. 61A Table omitted (with effect in accordance with Sch. 23 para. 65 of the amending Act) by virtue of Finance Act 2011 (c. 11), Sch. 23 paras. 62(3)(c), 65(1)(a) (with Sch. 23 paras. 50, 65(1)(b))
- F158** Word in Sch. 36 para. 61A Table substituted (with effect in accordance with Sch. 23 para. 65 of the amending Act) by Finance Act 2011 (c. 11), Sch. 23 paras. 62(3)(b), 65(1)(a) (with Sch. 23 paras. 50, 65(1)(b))
- F159** Words in Sch. 36 para. 61A Table inserted (19.7.2011) by Finance Act 2011 (c. 11), Sch. 24 para. 6

#### Statutory records

- 62 (1) For the purposes of this Schedule, information or a document forms part of a person's statutory records if it is information or a document which the person is required to keep and preserve under or by virtue of—
- the Taxes Acts, or
  - [<sup>F160</sup>(b) any other enactment relating to a tax,]
- subject to the following provisions of this paragraph.
- (2) To the extent that any information or document that is required to be kept and preserved under or by virtue of the Taxes Acts—
- does not relate to the carrying on of a business, and
  - is not also required to be kept or preserved under or by virtue of [<sup>F161</sup>any other enactment relating to a tax],
- it only forms part of a person's statutory records to the extent that the chargeable period or periods to which it relates has or have ended.
- (3) Information and documents cease to form part of a person's statutory records when the period for which they are required to be preserved by the enactments mentioned in sub-paragraph (1) has expired.

#### Textual Amendments

- F160** Sch. 36 para. 62(1)(b) substituted (1.4.2010) by Finance Act 2009 (c. 10), s. 96(3), Sch. 48 para. 15(2); S.I. 2009/3054, art. 2

*Status: Point in time view as at 16/11/2017.*

*Changes to legislation: Finance Act 2008, SCHEDULE 36 is up to date with all changes known to be in force on or before 01 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

**F161** Words in Sch. 36 para. 62(2)(b) substituted (1.4.2010) by Finance Act 2009 (c. 10), s. 96(3), Sch. 48 para. 15(3); S.I. 2009/3054, art. 2

#### Commencement Information

**I62** Sch. 36 para. 62 in force at 1.4.2009 by S.I. 2009/404, art. 2

### Tax

- 63 (1) In this Schedule, except where the context otherwise requires, “tax” means all or any of the following—
- (a) income tax,
  - (b) capital gains tax,
  - (c) corporation tax,
  - [ diverted profits tax,]
  - <sup>F162</sup>(ca) [ apprenticeship levy,]
  - <sup>F163</sup>(cb) (d) VAT,
  - [<sup>F164</sup>(e) insurance premium tax,
  - (f) inheritance tax,
  - (g) stamp duty land tax,
  - (h) stamp duty reserve tax,
  - [<sup>F165</sup>(ha) annual tax on enveloped dwellings,]
  - (i) petroleum revenue tax,
  - (j) aggregates levy,
  - (k) climate change levy,
  - (l) landfill tax, and
  - (m) relevant foreign tax,]
- and references to “a tax” are to be interpreted accordingly.
- (2) In this Schedule “corporation tax” includes any amount assessable or chargeable as if it were corporation tax.
- (3) In this Schedule “VAT” means—
- (a) value added tax charged in accordance with VATA 1994, <sup>F166</sup>...
  - (b) value added tax charged in accordance with the law of another member State [<sup>F167</sup>, and
  - (c) amounts listed in sub-paragraph (3A).]
- [ Those amounts are—
- <sup>F168</sup>(3A) (a) any amount that is recoverable under paragraph 5(2) of Schedule 11 to VATA 1994 (amounts shown on invoices as VAT), and
- (b) any amount that is treated as VAT by virtue of regulations under section 54 of VATA 1994 (farmers etc).]
- (4) In this Schedule “relevant foreign tax” means—
- (a) a tax of a member State, other than the United Kingdom, which is covered by the provisions for the exchange of information under [<sup>F169</sup>Council Directive

*Status: Point in time view as at 16/11/2017.*

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2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation] (as amended from time to time), and

- (b) any tax or duty which is imposed under the law of a territory in relation to which arrangements having effect by virtue of section 173 of FA 2006 (international tax enforcement arrangements) have been made and which is covered by the arrangements.

#### Textual Amendments

- F162** Sch. 36 para. 63(1)(ca) inserted (with effect in accordance with s. 116(1) of the amending Act) by Finance Act 2015 (c. 11), s. 105(2)
- F163** Sch. 36 para. 63(1)(cb) inserted (15.9.2016) by Finance Act 2016 (c. 24), s. 112 (with s. 117)
- F164** Sch. 36 para. 63(1)(e)-(m) substituted for Sch. 36 para. 63(1)(e) and word (1.4.2010) by Finance Act 2009 (c. 10), s. 96(1)(3); S.I. 2009/3054, art. 2
- F165** Sch. 36 para. 63(1)(ha) inserted (17.7.2013) by Finance Act 2013 (c. 29), Sch. 34 para. 5
- F166** Word in Sch. 36 para. 63(3)(a) omitted (21.7.2009) by virtue of Finance Act 2009 (c. 10), Sch. 47 para. 21(2)(a)
- F167** Sch. 36 para. 63(3)(c) substituted for words (21.7.2009) by Finance Act 2009 (c. 10), Sch. 47 para. 21(2)(b)
- F168** Sch. 36 para. 63(3A) inserted (21.7.2009) by Finance Act 2009 (c. 10), Sch. 47 para. 21(3)
- F169** Words in Sch. 36 para. 63(4) substituted (1.1.2013) by The European Administrative Co-Operation (Taxation) Regulations 2012 (S.I. 2012/3062), regs. 1(1), 6(1)

#### Commencement Information

- I63** Sch. 36 para. 63 in force at 1.4.2009 by S.I. 2009/404, art. 2

#### Tax position

- 64 (1) In this Schedule, except as otherwise provided, “tax position”, in relation to a person, means the person's position as regards any tax, including the person's position as regards—
- (a) past, present and future liability to pay any tax,
  - (b) penalties and other amounts that have been paid, or are or may be payable, by or to the person in connection with any tax, and
  - (c) claims, elections, applications and notices that have been or may be made or given in connection with [<sup>F170</sup>the person's liability to pay] any tax,
- and references to a person's position as regards a particular tax (however expressed) are to be interpreted accordingly.
- (2) References in this Schedule to a person's tax position include, where appropriate, a reference to the person's position as regards any deductions or repayments of tax, or of sums representing tax, that the person is required to make—
- (a) under PAYE regulations,
  - (b) under Chapter 3 of Part 3 of FA 2004 or regulations made under that Chapter (construction industry scheme), or
  - (c) by or under any other provision of the Taxes Acts.

[ References in this Schedule to a person's tax position also include, where appropriate, <sup>F171</sup>(2A) a reference to the person's position as regards the withholding by the person of another person's PAYE income (as defined in section 683 of ITEPA 2003).]

*Status: Point in time view as at 16/11/2017.*

*Changes to legislation: Finance Act 2008, SCHEDULE 36 is up to date with all changes known to be in force on or before 01 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (3) References in this Schedule to the tax position of a person include the tax position of—
- (a) a company that has ceased to exist, and
  - (b) an individual who has died.
- (4) References in this Schedule to a person's tax position are to the person's tax position at any time or in relation to any period, unless otherwise stated.

#### Textual Amendments

**F170** Words in Sch. 36 para. 64(1)(c) inserted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 47 para. 22\(2\)](#)

**F171** Sch. 36 para. 64(2A) inserted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 47 para. 22\(3\)](#)

#### Commencement Information

**I64** Sch. 36 para. 64 in force at 1.4.2009 by [S.I. 2009/404](#), [art. 2](#)

## PART 10

### CONSEQUENTIAL PROVISIONS]

#### TMA 1970

65 TMA 1970 is amended as follows.

#### Commencement Information

**I65** Sch. 36 para. 65 in force at 1.4.2009 by [S.I. 2009/404](#), [art. 2](#)

66 Omit section 19A (power to call for documents for purposes of enquiries).

#### Commencement Information

**I66** Sch. 36 para. 66 in force at 1.4.2009 by [S.I. 2009/404](#), [art. 2](#)

67 Omit section 20 (power to call for documents of taxpayer and others).

#### Commencement Information

**I67** Sch. 36 para. 67 in force at 1.4.2009 by [S.I. 2009/404](#), [art. 2](#)

68 (1) Section 20B (restrictions on powers to call for documents under ss20 and 20A) is amended as follows.

(2) In the heading, for “**ss 20 and**” substitute “**section**”.

(3) In subsection (1)—

- (a) omit “under section 20(1), (3) or (8A), or”,
- (b) omit “(or, in the case of section 20(3), to deliver or make available)”,
- (c) omit “, or to furnish the particulars in question”, and

*Status: Point in time view as at 16/11/2017.*

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- (d) omit “section 20(7) or (8A) or, as the case may be,”.
- (4) Omit subsections (1A) and (1B).
- (5) In subsection (2), omit from the beginning to “taxpayer; and”.
- (6) In subsection (3)—
  - (a) omit “under section 20(1) or (3) or”, and
  - (b) omit “section 20(3) and (4) and”.
- (7) In subsection (4)—
  - (a) omit “section 20(1) or”, and
  - (b) omit “, and as an alternative to delivering documents to comply with a notice under section 20(3) or (8A)”.
- (8) Omit subsections (5), (6) and (7).
- (9) In subsection (8), omit “section 20(3) or (8A) or”.
- (10) Omit subsections (9) to (14).

**Commencement Information**

**I68** Sch. 36 para. 68 in force at 1.4.2009 by [S.I. 2009/404](#), [art. 2](#) (with [art. 4](#))

- 69 (1) Section 20BB (falsification etc. of documents) is amended as follows.
  - (2) In subsection (1)(a), omit “20 or”.
  - (3) In subsection (2)(b), omit “or, in a case within section 20(3) or (8A) above, inspected”.

**Commencement Information**

**I69** Sch. 36 para. 69 in force at 1.4.2009 by [S.I. 2009/404](#), [art. 2](#) (with [art. 4](#))

- 70 (1) Section 20D (interpretation) is amended as follows.
  - (2) In subsection (2), for “sections 20 and” substitute “ section ”.
  - (3) Omit subsection (3).

**Commencement Information**

**I70** Sch. 36 para. 70 in force at 1.4.2009 by [S.I. 2009/404](#), [art. 2](#) (with [art. 4](#))

- 71 In section 29(6)(c) (assessment where loss of tax discovered), omit “, whether in pursuance of a notice under section 19A of this Act or otherwise”.

**Commencement Information**

**I71** Sch. 36 para. 71 in force at 1.4.2009 by [S.I. 2009/404](#), [art. 2](#) (with [art. 3](#))

- 72 Omit section 97AA (failure to produce documents under section 19A).

*Status: Point in time view as at 16/11/2017.*

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**Commencement Information**

**I72** Sch. 36 para. 72 in force at 1.4.2009 by [S.I. 2009/404](#), [art. 2](#) (with [arts. 3, 5](#))

- 73 In section 98 (penalties), in the Table—
- (a) in the first column, omit the entry for section 767C of ICTA, and
  - (b) in the second column, omit the entry for section 28(2) of F(No.2)A 1992.

**Commencement Information**

**I73** Sch. 36 para. 73 in force at 1.4.2009 by [S.I. 2009/404](#), [art. 2](#) (with [art. 6](#))

<sup>F172</sup>74 . . . . .

**Textual Amendments**

**F172** Sch. 36 para. 74 omitted (21.7.2009) by virtue of [Finance Act 2009 \(c. 10\)](#), [Sch. 57 para. 14\(a\)](#)

- 75 (1) Section 107A (relevant trustees) is amended as follows.
- (2) In subsection (2)(a), for “, 95 or 97AA” substitute “ or 95 ”.
  - (3) In subsection (3)(a), omit “or 97AA(1)(b)”.

**Commencement Information**

**I74** Sch. 36 para. 75 in force at 1.4.2009 by [S.I. 2009/404](#), [art. 2](#) (with [arts. 3, 5](#))

- 76 In section 118 (interpretation), in the definition of “tax”, omit “20”.

**Commencement Information**

**I75** Sch. 36 para. 76 in force at 1.4.2009 by [S.I. 2009/404](#), [art. 2](#) (with [art. 4](#))

- 77 In Schedule 1A (claims etc. not included in returns), omit paragraphs 6 and 6A (power to call for documents for purposes of enquiries and power to appeal against notice to produce documents).

**Commencement Information**

**I76** Sch. 36 para. 77 in force at 1.4.2009 by [S.I. 2009/404](#), [art. 2](#) (with [art. 5](#))

*National Savings Bank Act 1971 (c. 29)*

- 78 In section 12(3) (secrecy), for the words from “and of section 20(3)” to the end substitute “ and of Schedule 36 to the Finance Act 2008 (powers of officers of Revenue and Customs to obtain information and documents and inspect business premises) ”.

*Status: Point in time view as at 16/11/2017.*

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**Commencement Information**

**I77** Sch. 36 para. 78 in force at 1.4.2009 by [S.I. 2009/404](#), **art. 2** (with [art. 11](#))

*ICTA*

79 ICTA is amended as follows.

**Commencement Information**

**I78** Sch. 36 para. 79 in force at 1.4.2009 by [S.I. 2009/404](#), **art. 2**

<sup>F173</sup>80 .....

**Textual Amendments**

**F173** Sch. 36 para. 80 repealed (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 3 Pt. 1** (with [Sch. 2](#))

81 Omit section 767C (change in company ownership: information).

**Commencement Information**

**I79** Sch. 36 para. 81 in force at 1.4.2009 by [S.I. 2009/404](#), **art. 2** (with [art. 6](#))

<sup>F174</sup>82 .....

**Textual Amendments**

**F174** Sch. 36 para. 82 repealed (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\)](#), s. 1184(1), **Sch. 3 Pt. 1** (with [Sch. 2](#))

*FA 1990*

83 In section 125 of FA 1990 (information for tax authorities in other member States)

- 
- (a) omit subsections (1) and (2),
- <sup>F175</sup>(b) .....
- <sup>F175</sup>(c) .....
- <sup>F175</sup>(d) .....

**Textual Amendments**

**F175** Sch. 36 para. 83(b)(c)(d) omitted (13.8.2009) by virtue of [The Finance Act 2009, Schedule 47 \(Consequential Amendments\) Order 2009 \(S.I. 2009/2035\)](#), **Sch. para. 60(p)**



*Status: Point in time view as at 16/11/2017.*

*Changes to legislation: Finance Act 2008, SCHEDULE 36 is up to date with all changes known to be in force on or before 01 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### Commencement Information

**180** Sch. 36 para. 83 in force at 1.4.2009 by [S.I. 2009/404](#), [art. 2](#)

#### *Social Security Administration Act 1992 (c. 5)*

84 In section 110ZA of the Social Security Administration Act 1992 (Class 1, 1A, 1B or 2 contributions: powers to call for documents etc), for subsections (1) and (2) substitute—

“(1) Schedule 36 to the Finance Act 2008 (information and inspection powers) applies for the purpose of checking a person's position as regards relevant contributions as it applies for the purpose of checking a person's tax position, subject to the modifications in subsection (2).

(2) That Schedule applies as if—

- (a) references to any provision of the Taxes Acts were to any provision of this Act or the Contributions and Benefits Act relating to relevant contributions,
- (b) references to prejudice to the assessment or collection of tax were to prejudice to the assessment of liability for, and payment of, relevant contributions,
- (c) the reference to information relating to the conduct of a pending appeal relating to tax were a reference to information relating to the conduct of a pending appeal relating to relevant contributions, and
- (d) paragraphs 21, 35(4)(b), 36 and 37(2) of that Schedule (restrictions on giving taxpayer notice where taxpayer has made tax return) were omitted.”

#### Commencement Information

**181** Sch. 36 para. 84 in force at 1.4.2009 by [S.I. 2009/404](#), [art. 2](#) (with [art. 9](#))

#### *Social Security Administration (Northern Ireland) Act 1992 (c. 8)*

85 In section 104ZA of the Social Security Administration (Northern Ireland) Act 1992 (Class 1, 1A, 1B or 2 contributions: powers to call for documents etc), for subsections (1) and (2) substitute—

“(1) Schedule 36 to the Finance Act 2008 (information and inspection powers) applies for the purpose of checking a person's position as regards relevant contributions as it applies for the purpose of checking a person's tax position, subject to the modifications in subsection (2).

(2) That Schedule applies as if—

- (a) references to any provision of the Taxes Acts were to any provision of this Act or the Contributions and Benefits Act relating to relevant contributions,
- (b) references to prejudice to the assessment or collection of tax were to prejudice to the assessment of liability for, and payment of, relevant contributions,

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- (c) the reference to information relating to the conduct of a pending appeal relating to tax were a reference to information relating to the conduct of a pending appeal relating to relevant contributions, and
- (d) paragraphs 21, 35(4)(b), 36 and 37(2) of that Schedule (restrictions on giving taxpayer notice where taxpayer has made tax return) were omitted.”

**Commencement Information**

**I82** Sch. 36 para. 85 in force at 1.4.2009 by [S.I. 2009/404](#), **art. 2** (with **art. 9**)

*F(No.2)A 1992*

86 Omit section 28(1) to (3) (powers of inspection).

**Commencement Information**

**I83** Sch. 36 para. 86 in force at 1.4.2009 by [S.I. 2009/404](#), **art. 2**

*VATA 1994*

- 87 (1) Schedule 11 to VATA 1994 is amended as follows.
- (2) In paragraph 7 (furnishing information and producing documents), omit sub-paragraphs (2) to (9).
  - (3) In paragraph 10 (entry and search of premises and persons), omit sub-paragraphs (1) to (2A).

**Commencement Information**

**I84** Sch. 36 para. 87 in force at 1.4.2009 by [S.I. 2009/404](#), **art. 2**

*FA 1998*

88 In Schedule 18 to FA 1998 (company tax returns), omit paragraphs 27, 28 and 29 (notice to produce documents etc. for purposes of enquiry into company tax return, power to appeal against such notices and penalty for failure to produce documents etc).

**Commencement Information**

**I85** Sch. 36 para. 88 in force at 1.4.2009 by [S.I. 2009/404](#), **art. 2** (with **arts. 7, 8**)

*FA 1999*

89 In section 13(5) (gold), omit paragraph (c).

*Status: Point in time view as at 16/11/2017.*

*Changes to legislation: Finance Act 2008, SCHEDULE 36 is up to date with all changes known to be in force on or before 01 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

**Commencement Information**

**I86** Sch. 36 para. 89 in force at 1.4.2009 by [S.I. 2009/404](#), [art. 2](#)

*Tax Credits Act 2002 (c. 21)*

- 90 In section 25 of the Tax Credits Act 2002 (payments of working tax credit by employers), omit subsections (3) and (4).

**Commencement Information**

**I87** Sch. 36 para. 90 in force at 1.4.2009 by [S.I. 2009/404](#), [art. 2](#) (with [art. 9](#))

*FA 2006*

- 91 Omit section 174 of FA 2006 (international tax enforcement arrangements: information powers).

**Commencement Information**

**I88** Sch. 36 para. 91 in force at 1.4.2009 by [S.I. 2009/404](#), [art. 2](#) (with [art. 10](#))

*Other repeals*

- 92 In consequence of the preceding provisions of this Part of this Schedule, omit the following—
- (a) section 126 of FA 1988,
  - (b) sections 142(2), (3), (4), (6)(a), (7), (8) and (9) and 144(3), (5) and (7) of FA 1989,
  - (c) sections 187 and 255 of, and paragraph 29 of Schedule 19 to, FA 1994,
  - (d) paragraph 6 of Schedule 1 to the Civil Evidence Act 1995 (c. 38),
  - (e) paragraph 17 of Schedule 3, paragraph 3 of Schedule 19 and paragraph 2 of Schedule 22 to FA 1996,
  - (f) section 115 of, and paragraphs 36 and 42(6) and (7) of Schedule 19 to, FA 1998,
  - (g) section 15(3) of FA 1999,
  - (h) paragraphs 21 and 38(4) of Schedule 29 to FA 2001,
  - (i) section 20 of FA 2006, and
  - (j) paragraph 350 of Schedule 1 to ITA 2007.

**Commencement Information**

**I89** Sch. 36 para. 92 in force at 1.4.2009 by [S.I. 2009/404](#), [art. 2](#) (with [art. 11](#))

**Status:**

Point in time view as at 16/11/2017.

**Changes to legislation:**

Finance Act 2008, SCHEDULE 36 is up to date with all changes known to be in force on or before 01 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.