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**Changes to legislation:** There are currently no known outstanding effects for the Finance (No. 2) Act 2023, Schedule 5. (See end of Document for details)

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## SCHEDULES

### SCHEDULE 5

Section 37

#### RECORDS RELATING TO TRANSFER PRICING

#### PART 1

#### AMENDMENTS RELATING TO CORPORATION TAX

*Records to be kept for the purposes of corporation tax*

1 (1) In Part 3 of Schedule 18 to FA 1998 (duty to keep and preserve records), paragraph 21 is amended as follows.

(2) After sub-paragraph (5A) insert—

“(5AA) Regulations under this paragraph may make provision, in relation to relevant transfer pricing records specified, or of a description specified, in the regulations—

- (a) as to the form or manner in which those records are to be kept and preserved;
- (b) by reference to things specified in the transfer pricing guidelines (within the meaning of section 164 of TIOPA 2010 (interpretation in accordance with OECD principles)).”

(3) For sub-paragraph (6) substitute—

“(6) For the purposes of this paragraph—

- (a) records are “relevant transfer pricing records” if the Commissioners for His Majesty’s Revenue and Customs reasonably consider that the records may relate to the calculation of profits or losses in accordance with Part 4 of TIOPA 2010 (transfer pricing);
- (b) “supporting documents” includes accounts, books, deeds, contracts, vouchers and receipts.”

*Assessments relating to corporation tax*

2 In Part 5 of Schedule 18 to FA 1998 (determinations and assessments), after paragraph 49 insert—

*“Transfer pricing records: carelessness*

49A (1) This paragraph applies where—

- (a) the situation mentioned in paragraph 41(1) or (2) has been brought about by a person within any of paragraphs (a) to (c)

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- of paragraph 43 (“P”) as regards a relevant accounting period of a company,
- (b) the situation relates to the calculation of profits or losses in accordance with Part 4 of TIOPA 2010 (transfer pricing) for the purposes of that period, and
  - (c) the company has failed to comply, in relation to specified relevant transfer pricing records that relate to the calculation, with either or both of—
    - (i) paragraph 21 (duty to keep and preserve records), and
    - (ii) an information notice (within the meaning of Schedule 36 to the Finance Act 2008 (information and inspection powers)).
- (2) It is to be presumed for the purposes of this Part of this Schedule that the situation mentioned in paragraph 41(1) or (2) was brought about carelessly by P, unless—
- (a) the situation was brought about deliberately by P, or
  - (b) the company satisfies HMRC or (on an appeal notified to the tribunal) the tribunal that P took reasonable care to avoid the situation.
- (3) For the purposes of this paragraph—
- (a) “relevant accounting period of a company” means an accounting period in respect of which—
    - (i) the company, together with one or more other enterprises, constitutes an MNE Group within the meaning of the Taxes (Base Erosion and Profit Shifting) (Country-by-Country Reporting) Regulations 2016 (S.I. 2016/237) (see regulation 2(3) of those Regulations), and
    - (ii) the MNE Group meets the threshold requirement within the meaning of those Regulations (see regulations 3(2) to (4) of those Regulations);
  - (b) records are “specified relevant transfer pricing records” if—
    - (i) they are relevant transfer pricing records specified, or of a description specified, in regulations under paragraph 21 (duties to keep and preserve records), and
    - (ii) the company is required to keep and preserve those records under that paragraph.”

## PART 2

### AMENDMENTS RELATING TO INCOME TAX

#### *Records to be kept for the purposes of income tax*

- 3 (1) In Part 2 of TMA 1970 (records), section 12B (records to be kept for purposes of returns) is amended as follows.
- (2) After subsection (5B) insert—

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“(5BA) Regulations under this section may make provision, in relation to relevant transfer pricing records specified, or of a description specified, in the regulations—

- (a) as to the form or manner in which those records are to be kept and preserved;
- (b) by reference to things specified in the transfer pricing guidelines (within the meaning of section 164 of TIOPA 2010 (interpretation in accordance with OECD principles)).”

(3) In subsection (6)—

- (a) omit the “and” after paragraph (a);
- (b) after that paragraph insert—

“(aa) records are “relevant transfer pricing records” if the Commissioners for His Majesty’s Revenue and Customs reasonably consider that the records may relate to the calculation of profits or losses in accordance with Part 4 of TIOPA 2010 (transfer pricing);”.

#### *Assessments relating to income tax*

4 In Part 4 of TMA 1970 (assessment and claims), after section 30B insert—

#### **“30C Transfer pricing records: carelessness for the purposes of section 29**

(1) This section applies where—

- (a) the situation mentioned in section 29(1) has been brought about by a relevant trustee, or a person acting on their behalf, as regards a relevant year of assessment,
- (b) the situation relates to the calculation of profits or losses in accordance with Part 4 of TIOPA 2010 (transfer pricing) for the purposes of that year, and
- (c) the relevant person has failed to comply, in relation to specified relevant transfer pricing records that relate to the calculation, with either or both of—
  - (i) section 12B (records to be kept for the purposes of returns), and
  - (ii) an information notice (within the meaning of Schedule 36 to the Finance Act 2008 (information and inspection powers)).

(2) It is to be presumed for the purposes of section 29 that the situation mentioned in section 29(1) was brought about carelessly by the relevant trustee, or the person acting on their behalf, unless—

- (a) the situation was brought about deliberately by the relevant trustee, or the person acting on their behalf, or
- (b) the relevant trustee satisfies HMRC or (on an appeal notified to the tribunal) the tribunal that they, or the person acting on their behalf, took reasonable care to avoid the situation.

(3) For the purposes of this paragraph—

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- (a) “relevant person” means a person who was required by a notice under section 8A to make and deliver the return in respect of the relevant year of assessment;
- (b) “relevant year of assessment” means a year of assessment in respect of which—
  - (i) the trustees of the trust concerned, together with one or more other enterprises, constitutes an MNE Group within the meaning of the Taxes (Base Erosion and Profit Shifting) (Country-by-Country Reporting) Regulations 2016 (S.I. 2016/237) (see regulation 2(3) of those Regulations), and
  - (ii) the MNE Group meets the threshold requirement within the meaning of those Regulations (see regulations 3(2) to (4) of those Regulations);
- (c) records are “specified relevant transfer pricing records” if—
  - (i) they are relevant transfer pricing records specified, or of a description specified, in regulations under section 12B, and
  - (ii) the relevant person is required to keep and preserve those records under that section.

### **30D Transfer pricing records: carelessness for the purposes of section 30B**

- (1) This section applies where—
  - (a) the situation mentioned in section 30B(1) has been brought about by a person within section 30B(5) (“P”) as regards a partnership statement in respect of a relevant period,
  - (b) the situation relates to the calculation of profits or losses in accordance with Part 4 of TIOPA 2010 (transfer pricing) for the purposes of that period, and
  - (c) the relevant person (whether or not P) has failed to comply, in relation to specified relevant transfer pricing records that relate to the calculation, with either or both of—
    - (i) section 12B (records to be kept for the purposes of returns), and
    - (ii) an information notice (within the meaning of Schedule 36 to the Finance Act 2008 (information and inspection powers)).
- (2) It is to be presumed for the purposes of section 30B that the situation mentioned in section 30B(1) was brought about carelessly by P, unless—
  - (a) the situation was brought about deliberately by P, or
  - (b) the relevant person satisfies HMRC or (on an appeal notified to the tribunal) the tribunal that P took reasonable care to avoid the situation.
- (3) For the purposes of this paragraph—
  - (a) “relevant period” means a period in respect of which—
    - (i) the partnership to which the partnership statement relates, together with one or more other enterprises, constitutes an MNE Group within the meaning of the Taxes (Base Erosion and Profit Shifting) (Country-by-Country Reporting) Regulations 2016 (S.I. 2016/237) (see regulation 2(3) of those Regulations), and

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- (ii) the MNE Group meets the threshold requirement within the meaning of those Regulations (see regulations 3(2) to (4) of those Regulations);
- (b) “relevant person” means a person who was required by a notice under section 12AA to make and deliver the return in respect of the relevant period;
- (c) records are “specified relevant transfer pricing records” if—
  - (i) they are relevant transfer pricing records specified, or of a description specified, in regulations under section 12B, and
  - (ii) the relevant person is required to keep and preserve those records under that section.”

### PART 3

#### AMENDMENTS RELATING TO CORPORATION TAX AND INCOME TAX

##### *Penalties for errors*

- 5 (1) Schedule 24 to FA 2007 (penalties for errors) is amended as follows.
- (2) In Part 1 (liability for penalty), after paragraph 3B insert—

##### *“Errors related to transfer pricing records*

- 3C (1) This paragraph applies where—
- (a) a document of a kind listed in the Table in paragraph 1 relating to a relevant tax period is given to HMRC by a person (“P”),
  - (b) the document contains an inaccuracy—
    - (i) which falls within paragraph 1(2), and
    - (ii) which involves the calculation of profits or losses in accordance with Part 4 of TIOPA 2010 (transfer pricing) for the purposes of that period, and
  - (c) the relevant person (whether or not P) failed to comply, in relation to specified relevant transfer pricing records that relate to the inaccuracy, with one or more of—
    - (i) section 12B of TMA 1970 (records to be kept for the purposes of returns),
    - (ii) paragraph 21 of Schedule 18 to FA 1998 (duty to keep and preserve records), and
    - (iii) an information notice (within the meaning of Schedule 36 to FA 2008 (information and inspection powers)).
- (2) It is to be presumed that the inaccuracy was careless, within the meaning of paragraph 3, unless—
- (a) the inaccuracy was deliberate on P’s part, or
  - (b) P satisfies HMRC or (on an appeal notified to the tribunal) the tribunal that P took reasonable care to avoid the inaccuracy.
- (3) Sub-paragraphs (4) to (6) apply for the purposes of this paragraph.

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- (4) “Relevant person”, in relation to a document of a kind listed in the Table in paragraph 1, means—
- (a) the person to whose tax liability the document relates,
  - (b) in the case of a return under section 8A of TMA 1970 (trustee's return), a relevant trustee (within the meaning of that Act), or
  - (c) in the case of a partnership return, or a statement, declaration or accounts in connection with a partnership return, a person who was required by a notice under section 12AA of TMA 1970 (partnership return) to make and deliver a return in respect of relevant tax period.
- (5) “Relevant tax period” means a tax period—
- (a) in respect of which—
    - (i) the person mentioned in [sub-paragraph \(4\)\(a\)](#),
    - (ii) in the case mentioned in [sub-paragraph \(4\)\(b\)](#), the trustees of the trust concerned, or
    - (iii) in the case mentioned in [sub-paragraph \(4\)\(c\)](#), the partnership to which the partnership return relates,
 together with one or more other enterprises, constitutes an MNE Group within the meaning of the Taxes (Base Erosion and Profit Shifting) (Country-by-Country Reporting) Regulations 2016 ([S.I. 2016/237](#)) (see regulation 2(3) of those Regulations), and
  - (b) in respect of which the MNE Group meets the threshold requirement within the meaning of those Regulations (see regulations 3(2) to (4) of those Regulations).
- (6) Records are “specified relevant transfer pricing records” if—
- (a) they are relevant transfer pricing records specified, or of a description specified, in regulations under section 12B of TMA 1970 or paragraph 21 of Schedule 18 to FA 1998 (duties to keep and preserve records), and
  - (b) the relevant person is required to keep and preserve those records under either or both of those provisions.”
- (3) In Part 4 (miscellaneous), in paragraph 18 (agency), in sub-paragraph (6)—
- (a) for “Paragraph 3A applies” substitute “Paragraphs 3A and 3C apply”;
  - (b) for “it applies” substitute “they apply”.

#### *Information and inspection powers*

- 6 (1) Schedule 36 to FA 2008 (information and inspection powers) is amended as follows.
- (2) In Part 4 (restrictions on powers), in paragraph 21 (taxpayer notices following tax return)—
- (a) in sub-paragraph (3), for “D” substitute “E”;
  - (b) after sub-paragraph (8) insert—
    - “(8A) Condition E is that the notice is given for the purpose of obtaining any specified relevant transfer pricing information or documents.

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(8B) For the purposes of Condition E, information or documents are “specified relevant transfer pricing information or documents” if—

- (a) they are relevant transfer pricing records specified, or of a description specified, in regulations under section 12B of TMA 1970 or paragraph 21 of Schedule 18 to FA 1998 (duties to keep and preserve records), and
- (b) the relevant person is required to keep and preserve those records under either or both of those provisions.

(8C) For the purposes of [subsection \(8B\)](#), the “relevant person” means—

- (a) in the case of a tax return made in respect of a chargeable period under section 8A or 12AA of TMA 1970 (trustee’s and partnership returns)—
  - (i) the person, or
  - (ii) a person who was required by a notice under the section concerned to make and deliver the return;
- (b) in any other case, the person.”;

(3) In Part 6 (special cases), after paragraph 37B insert—

*“Specified relevant transfer pricing documents*

37C (1) This paragraph applies to an information notice given to a relevant person in an MNE Group (“A”) to the extent that the notice refers to specified relevant transfer pricing documents.

(2) Paragraph 18 (documents not in person’s possession or power) does not apply in relation to a specified relevant transfer pricing document that—

- (a) is not in A’s possession or power, but
- (b) is in the power or possession of another relevant person in the MNE Group concerned (“B”),

(and accordingly the information notice may require A to produce the document).

(3) For the purposes of this paragraph—

- (a) documents are “specified relevant transfer pricing documents” if—
  - (i) they are relevant transfer pricing records specified, or of a description specified, in regulations under section 12B of TMA 1970 or paragraph 21 of Schedule 18 to FA 1998 (duties to keep and preserve records), and
  - (ii) A is required to keep and preserve those records under either or both of those provisions;
- (b) “MNE Group” has the same meaning as in the Taxes (Base Erosion and Profit Shifting) (Country-by-Country Reporting) Regulations 2016 ([S.I. 2016/237](#)) (see regulation 2(3) of those Regulations);
- (c) “relevant person in an MNE Group” means—
  - (i) a company,

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(ii) a trustee of a trust, or  
(iii) a partner in a partnership,  
where that company, the trustees or the partnership, together  
with one or more other enterprises, constitutes an MNE Group.”

#### **PART 4**

##### COMMENCEMENT

- 7 Regulations made under—
- (a) paragraph 21 of Schedule 18 to FA 1998 by virtue of the amendments made by [paragraph 1](#) of this Schedule, or
  - (b) section 12B of TMA 1970 by virtue of the amendments made by [paragraph 3](#) of this Schedule,
- have effect in relation to such accounting periods or tax years beginning on or after 1 April 2023 as are specified in the regulations.



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