
Changes to legislation: There are currently no known outstanding effects for the Finance (No. 2) Act 2023, Part 1. (See end of Document for details)

SCHEDULES

SCHEDULE 5

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.”

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