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SCHEDULES

SCHEDULE 13

STAMP DUTY LAND TAX: INFORMATION POWERS

PART 6

ORDER OF JUDICIAL AUTHORITY FOR THE DELIVERY OF DOCUMENTS

Order for the delivery of documents

- 32 (1) The appropriate judicial authority may make an order under this paragraph if satisfied on information on oath given by an authorised officer of the Board—
- (a) that there is reasonable ground for suspecting that an offence involving serious fraud in connection with, or in relation to, stamp duty land tax has been or is about to be committed, and
 - (b) that documents that may be required as evidence for the purposes of any proceedings in respect of such an offence are or may be in the power or possession of any person.
- (2) An order under this paragraph is an order requiring the person who appears to the authority to have in his possession or power the documents specified or described in the order to deliver them to an officer of the Board within—
- (a) ten working days after the day on which notice of the order is served on him, or
 - (b) such shorter or longer period as may be specified in the order.
- For this purpose a “working day” means any day other than a Saturday, Sunday or public holiday.
- (3) The appropriate judicial authority is—
- (a) in England and Wales, a circuit judge;
 - (b) in Scotland, a sheriff;
 - (c) in Northern Ireland, a county court judge.
- (4) Where in Scotland the information relates to persons residing or having places of business at addresses situated in different sheriffdoms—
- (a) an application for an order may be made to the sheriff for the sheriffdom in which any of the addresses is situated, and
 - (b) where the sheriff makes an order in respect of a person residing or having a place of business in his own sheriffdom, he may also make orders in respect of all or any of the other persons to whom the information relates (whether or not they have an address within the sheriffdom).
- (5) In sub-paragraph (1) an “authorised officer of the Board” means an officer of the Board authorised by the Board for the purposes of this Part of this Schedule.

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- (6) The Inland Revenue may make provision by regulations as to—
- (a) the procedures for approving in any particular case the decision to apply for an order under this Part of this Schedule, and
 - (b) the descriptions of officer by whom such approval may be given.

Notice of application for order

- 33 (1) A person is entitled—
- (a) to notice of the intention to apply for an order against him under paragraph 32, and
 - (b) to appear and be heard at the hearing of the application,
- unless the appropriate judicial authority is satisfied that this would seriously prejudice the investigation of the offence.
- (2) The Inland Revenue may make provision by regulations as to the notice to be given, the contents of the notice and the manner of giving it.

Obligations of person given notice of application

- 34 (1) A person who has been given notice of intention to apply for an order under paragraph 32 must not—
- (a) conceal, destroy, alter or dispose of any document to which the application relates, or
 - (b) disclose to any other person information or any other matter likely to prejudice the investigation of the offence to which the application relates.

This is subject to the following qualifications.

- (2) Sub-paragraph (1)(a) does not prevent anything being done—
- (a) with the leave of the appropriate judicial authority,
 - (b) with the written permission of an officer of the Board,
 - (c) after the application has been dismissed or abandoned, or
 - (d) after any order made on the application has been complied with.
- (3) Sub-paragraph (1)(b) does not prevent a professional legal adviser from disclosing any information or other matter—
- (a) to, or to a representative of, a client of his in connection with the giving by the adviser of legal advice to the client, or
 - (b) to any person—
 - (i) in contemplation or, or in connection with, legal proceedings, and
 - (ii) for the purposes of those proceedings.

This sub-paragraph does not apply in relation to any information or other matter that is disclosed with a view to furthering a criminal purpose.

- (4) A person who fails to comply with the obligation in sub-paragraph (1)(a) or (b) may be dealt with as if he had failed to comply with an order under paragraph 32.

Exception of items subject to legal privilege

- 35 (1) This Part of this Schedule does not apply to items subject to legal privilege.
- (2) Items “subject to legal privilege” means—

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- (a) communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client;
 - (b) communications between a professional legal adviser and his client or any person representing his client, or between such an adviser or his client or any such representative and any other person, made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings;
 - (c) items enclosed with or referred to in such communications and made—
 - (i) in connection with the giving of legal advice, or
 - (ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings,when they are in possession of a person entitled to possession of them.
- (3) Items held with the intention of furthering a criminal purpose are not subject to legal privilege.

Resolution of disputes as to legal privilege

- 36 (1) The Inland Revenue may make provision by regulations for the purposes of this Part of this Schedule for the resolution of disputes as to whether a document, or part of a document, is an item subject to legal privilege.
- (2) The regulations may, in particular, make provision as to—
- (a) the custody of the document whilst its status is being decided,
 - (b) the appointment of an independent, legally qualified person to decide the matter,
 - (c) the procedures to be followed, and
 - (d) who is to meet the costs of the proceedings.

Complying with an order

- 37 (1) The Inland Revenue may make provision by regulations as to how a person is to comply with an order under paragraph 32.
- (2) The regulations may, in particular, make provision as to—
- (a) the officer of the Board to whom the documents are to be produced,
 - (b) the address to which the documents are to be taken or sent, and
 - (c) the circumstances in which sending documents by post complies with the order.
- (3) Where an order relates to a document in electronic or magnetic form, the order shall be taken to require the person to deliver the information recorded in the document in a form in which it is visible and legible.

Document not to be retained if photograph or copy sufficient

- 38 Where a document delivered to an officer of the Board under this Part of this Schedule is of such a nature that a photograph or copy of it would be sufficient—
- (a) for use as evidence at a trial for an offence, or
 - (b) for forensic examination or for investigation in connection with an offence,

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it shall not be retained longer than is necessary to establish that fact and to obtain the photograph or copy.

Access to or supply of photograph or copy of documents delivered

- 39 (1) If a request for permission to be granted access to a document that—
- (a) has been delivered to an officer of the Board under this Part of this Schedule, and
 - (b) is retained by the Board for the purposes of investigating an offence,
- is made to the officer in overall charge of the investigation by a person who had custody or control of the document immediately before it was so delivered, or by someone acting on behalf of any such person, the officer shall allow the person who made the request access to it under the supervision of an officer of the Board.
- (2) If a request for a photograph or copy of any such document is made to the officer in overall charge of the investigation by a person who had custody or control of the document immediately before it was so delivered, or by someone acting on behalf of any such person, the officer shall—
- (a) allow the person who made the request access to it under the supervision of an officer of the Board for the purpose of photographing or copying it, or
 - (b) photograph or copy it, or cause it to be photographed or copied.
- (3) Where a document is photographed or copied under sub-paragraph (2)(b) the photograph or copy shall be supplied to the person who made the request.
- (4) The photograph or copy shall be supplied within a reasonable time from the making of the request.
- (5) There is no duty under this paragraph to grant access to, or to supply a photograph or copy of, a document if the officer in overall charge of the investigation for the purposes of which it was delivered has reasonable grounds for believing that to do so would prejudice—
- (a) that investigation,
 - (b) the investigation of an offence other than the offence for the purposes of the investigation of which the document was delivered, or
 - (c) any criminal proceedings that may be brought as a result of—
 - (i) the investigation of which he is in charge, or
 - (ii) any such investigation as is mentioned in paragraph (b).
- (6) The references in this paragraph to the officer in overall charge of the investigation is to the person whose name and address are endorsed on the order concerned as being the officer so in charge.

Sanction for failure to comply with order

- 40 (1) A person who fails to comply with an order under this Part of this Schedule may be dealt with as if he had committed a contempt of the court.
- (2) For this purpose “the court” means—
- (a) in relation to an order made by a circuit judge, the Crown Court;
 - (b) in relation to an order made by a sheriff, a sheriff court;

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- (c) in relation to an order made by a county court judge in Northern Ireland, a county court in Northern Ireland.

Notice of order, etc

- 41 The Inland Revenue may make provision by regulations as to the circumstances in which notice of an order under paragraph 32, or of an application for such an order, is to be treated as having been given.

General provisions about regulations

- 42 Regulations under this Part of this Schedule may contain such incidental, supplementary and transitional provision as appears to the Inland Revenue to be appropriate.

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