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SCHEDULES

SCHEDULE 36

INFORMATION AND INSPECTION POWERS

Modifications etc. (not altering text)

- C1** 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)**
- C1** 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)**
- C1** 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**
- 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), **33(2)(3)** (with reg. 1(4)(6))
- 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))
- 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), **61** (with reg. 1(4)(6))

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.

Commencement Information

- II** 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, 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).

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- (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.

Commencement Information

I2 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.

Commencement Information

I3 Sch. 36 para. 20 in force at 1.4.2009 by [S.I. 2009/404](#), [art. 2](#)

Taxpayer notices [^{F1}following tax return]

Textual Amendments

F1 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 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.

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- (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 [^{F2}, 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 [^{F3}the] person's [^{F4}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 [^{F5}of tax or withholding of income] referred to in paragraph 64(2) [^{F6}or (2A)] (PAYEetc).
- [^{F7}(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

- F2** Words in Sch. 36 para. 21(6) inserted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 47 para. 9\(2\)](#)
- F3** Word in Sch. 36 para. 21(7) substituted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 47 para. 9\(3\)](#)
- F4** 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
- F5** Words in Sch. 36 para. 21(8) inserted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 47 para. 9\(4\)\(a\)](#)
- F6** Word in Sch. 36 para. 21(8) inserted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 47 para. 9\(4\)\(b\)](#)
- F7** Sch. 36 para. 21(9) inserted (21.7.2009) by [Finance Act 2009 \(c. 10\)](#), [Sch. 47 para. 9\(5\)](#)

Commencement Information

- I4** Sch. 36 para. 21 in force at 1.4.2009 by [S.I. 2009/404](#), art. 2

[^{F8}Taxpayer notices following land transaction return

Textual Amendments

- F8** [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.

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- (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—
- (a) the return, or
 - (b) 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—
- (a) an amount that ought to have been assessed to stamp duty land tax in respect of the transaction may not have been assessed,
 - (b) an assessment to stamp duty land tax in respect of the transaction may be or have become insufficient, or
 - (c) 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.]

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

I5 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 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 [F9tribunal] 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, F10 ...
 - F10(b)

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Textual Amendments

- F9** 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)**
- F10** 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)**

Commencement Information

- I6** 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.

Commencement Information

- I7** 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).

Commencement Information

- I8** Sch. 36 para. 25 in force at 1.4.2009 by [S.I. 2009/404](#), **art. 2**

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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.

Commencement Information

I9 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.

Commencement Information

I10 Sch. 36 para. 27 in force at 1.4.2009 by [S.I. 2009/404](#), [art. 2](#)

Corresponding restrictions on inspection of^{F11}... documents

Textual Amendments

F11 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^{F12}... 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

F12 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](#)

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Commencement Information

111 Sch. 36 para. 28 in force at 1.4.2009 by [S.I. 2009/404](#), [art. 2](#)

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