

FINANCE ACT 2009

EXPLANATORY NOTES

INTRODUCTION

Section 96 and Schedule 48: Extension of Information and Inspection Powers to Further Taxes

Summary

1. **Section 96** and Schedule 48 amend Schedule 36 to the Finance Act (FA) 2008 (Schedule 36). They extend HM Revenue & Customs' (HMRC) powers to obtain information and inspect businesses to matters concerning insurance premium tax, inheritance tax (IHT), stamp duty land tax (SDLT), stamp duty reserve tax (SDRT), petroleum revenue tax, aggregates levy, climate change levy and landfill tax. The section also provides for the Schedule to come into force on a day appointed by Treasury order, made by statutory instrument.

Details of the Section

2. Subsection (1) amends paragraph 63(1) of Schedule 36 which specifies the taxes to which Schedule 36 applies. That Schedule makes provision about the powers of HMRC officers to obtain information and inspect businesses in respect of income tax, capital gains tax (CGT), corporation tax (CT) and VAT. The scope of the Schedule will now be widened to include the further taxes listed.
3. Subsections (3) and (4) provide that the amendments made by the section and the Schedule will come into force on a day appointed by the Treasury by an order made by statutory instrument and that different days may be appointed for different purposes.
4. Subsections (5) to (8) provide a power to make statutory instruments containing provisions or savings in consequence of or in connection with Schedule 36 as extended.

Details of the Schedule

5. Paragraph 2 makes a consequential amendment to paragraph 5(4)(b) of Schedule 36 to reflect the inclusion of the new taxes into Schedule 36.
6. Paragraph 3 inserts new paragraph 10A into Schedule 36. This provides a power for HMRC to inspect business premises and assets and relevant documents on the premises. It is very closely modelled on the existing paragraph 10 of Schedule 36 but it now applies to an "involved third party" which is a new concept within Schedule 36. It allows HMRC to inspect the premises, assets and documents of certain involved third parties in order to check a person's tax position, but only for a relevant tax. These new terms are defined by new paragraph 61A which is inserted by paragraph 14 below.
7. Paragraph 4 makes consequential amendments to paragraph 12 of Schedule 36.
8. Paragraph 5 inserts new paragraphs 12A and 12B into Schedule 36. New paragraph 12A(1) provides a power for HMRC to enter and inspect any premises for the purpose of valuing the premises with respect to income tax or CT. "Premises" is defined in paragraph 58 of Schedule 36. An example of the use of this power will be when a

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dwelling is transferred to or made available to an employee in return for services. The power replaces and updates that in section 110 of the Taxes Management Act 1970 (TMA) which will be repealed.

9. New paragraph 12A(2) provides a power for HMRC to enter premises and inspect the premises and any other property on the premises for the purpose of valuing, measuring or determining the character of the premises or property.
10. Under new paragraph 12A(3) the power in new paragraph 12A(2) only applies if the valuation etc is reasonably required to check any person's tax position as regards the specified taxes. This power replaces the powers in section 111 of TMA, section 220 of the Inheritance Tax Act 1984 (for IHT), section 94 of FA 2003 (for SDLT) and Regulation 20 of [SI 1986/1711](#) which applies section 111 of TMA to SDRT.
11. New paragraph 12A(4) allows for other persons to accompany the HMRC officer if necessary (for example an expert external valuer who may value an asset such as a rare painting).
12. New paragraph 12B sets restrictions on carrying out inspections for valuation purposes under new paragraph 12A. The effect is that an inspection can only be carried out if one of two conditions is met. The first is that the relevant person (defined in sub-paragraph (3)) must have agreed the time of the inspection and been given a written notice. The alternative condition is that the inspection has been approved by the tribunal. In that case any relevant person specified by the tribunal must be given at least seven days' notice in writing of the inspection.
13. New paragraph 12B(5) and (6) mirror the rules in paragraph 12 of Schedule 36 about the content of the notice given at the time of inspection. In addition, new paragraph 12B(7) requires that an officer must produce evidence of authority if required to do so.
14. Paragraph 6(2) inserts a cross-reference to paragraph 39 of Schedule 36 (penalties), for clarity.
15. Paragraph 6(3) amends paragraph 13(1A) of Schedule 36 which is inserted by Schedule 47 allows applications to the tribunal for approval of an inspection visit to be without notice to the respondent. This is now made subject to new paragraph 13(2A) inserted by paragraph 6(5).
16. Paragraph 6(5) inserts new paragraphs 13(2A) and (2B) into Schedule 36 which cover the tribunal's approval of inspections for new paragraph 12A (valuation), in the same way that paragraph 13(2) of Schedule 36 covers tribunal approval of inspection under paragraphs 10, 10A and 11 of Schedule 36. It adds conditions at new sub-paragraphs (b), (c) and (d) which only apply to inspections for valuation purposes. These provide for the person whose tax position is being checked and the occupier to be given a reasonable opportunity to make representations to the officer and for the tribunal to be given a summary of the representations made. The provisions relating to the occupier making representations do not apply if the tribunal is satisfied that the occupier cannot be identified.
17. Paragraph 7 amends paragraph 17(b) of Schedule 36 so that the power to record information extends to recording information about property and goods.
18. Paragraph 8(2) amends paragraph 21(7) of Schedule 36. Paragraph 21 of Schedule 36 restricts HMRC's power to ask for information to check an income tax, CGT or CT position for a period for which a tax return has been submitted. This replicates the existing arrangements (the enquiry window). This restriction does not apply for checks in relation to VAT which does not have an equivalent enquiry mechanism.
19. This amendment has the effect that the rules which apply to VAT will now apply more widely, to all the taxes now being brought within the scope of Schedule 36. There is an exception of SDLT (for which, see below), as that tax does have an enquiry window.

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20. Paragraph 9 inserts new paragraph 21A into Schedule 36 to incorporate the SDLT enquiry window. This paragraph mirrors the existing paragraph 21 and provides the same restriction on asking for information in respect of SDLT as is provided for income tax, CGT and CT.
21. Paragraph 11 inserts new paragraphs 34A, 34B and 34C into Schedule 36. This introduces the concept of “involved third parties” and contains special provisions for pension schemes.
22. New paragraph 34A is closely modelled on the existing paragraph 34 of Schedule 36 but it now applies to an “involved third party” (defined in new paragraph 61A below). It allows HMRC to give such a person a third party or unknown taxpayer information notice in order to check any other person’s tax position, but only for relevant information, relevant documents and for a relevant tax. Involved third parties are all persons who stand in a special position in relation to a taxpayer for a particular tax.
23. Sub-paragraphs (2) to (5) disapply certain provisions of Schedule 36 which relate to third party notices. The effect of this is that involved third parties are treated as if they were first parties (taxpayers) rather than third parties in relation to approval and copying of notices. Similarly, an involved third party may not appeal against a requirement in a notice to provide information or documents which form part of their statutory records. Sub-paragraph (6) cross refers to definitions in new paragraph 61A (see below).
24. New paragraph 34B provides for pension schemes’ rules similar to those that will apply to involved third parties. There are additional special rules, taken from the existing information power in section 252 of FA 2004, about to whom copies of notices must be given.
25. New paragraph 34C defines a number of terms used in new paragraph 34B. The regulation envisaged in the definition of “prescribed” will be laid in time to come into force alongside this Schedule.
26. Paragraph 12 amends paragraph 35 of Schedule 36 taking into account other changes made by Schedule 47 to this Act. The amendments reflect the insertion of new paragraph 21A. The special rules that apply to taxpayer notices where a return is held for the relevant period are extended to SDLT as that tax also has an enquiry window.
27. Paragraph 13 inserts a new paragraph 37(2A) into Schedule 36 to reflect the insertion of new paragraph 21A.
28. Paragraph 14 inserts a new paragraph 61A into Schedule 36. This defines certain terms used in the new inspection and information powers which apply to involved third parties. It contains a table which sets out what the terms “involved third parties”, “relevant information and relevant documents” and “relevant tax” mean in nine different cases. Involved third parties are persons who have obligations under current legislation to provide information in relation to certain taxes in the same way as the taxpayer and are defined in line with the current legislation.
29. Paragraph 15(1) provides for amendments to paragraph 62 of Schedule 36 which defines “statutory records” for the purpose of the information and inspection powers contained in Schedule 36, and presently reflects the scope of Schedule 36 as originally enacted by referring to records required to be kept under the Taxes Act or VAT legislation.
30. Sub-paragraphs (2) and (3) replace references to VAT legislation by a wider reference to any other tax legislation. This is a consequential amendment to reflect the changes made to the scope of the taxes now to be covered by Schedule 36.

Background Note

31. [Schedule 36](#) to FA 2008 contains a new set of information and inspection powers which apply in checking any person's tax position in relation to income tax, CT, CGT and VAT. They came into force on 1 April 2009.
32. The main effect of this section and Schedule is to apply Schedule 36 to FA 2008 to many of the other taxes and duties administered by HMRC, from a date to be appointed. Once complete, this will be a major piece of modernised cross-tax legislation.
33. There are some information powers in a range of taxes that are not adequately covered by the existing powers in Schedule 36 to FA 2008. To address this it has been necessary to introduce the concept of an "involved third party". This reflects the approach of existing law to persons who are neither taxpayers (first parties) nor conventional third parties such as banks. These persons are closely involved in a potentially taxable event or transaction and are currently required to provide information about that activity. In relation to these persons some of the normal rules that apply to third party information notices are relaxed and HMRC will be able to inspect the premises of such parties.
34. The amended Schedule 36 to FA 2008 also now contains an entry power for valuation purposes which brings together several existing powers into a single aligned power. The power to enter and inspect premises in Schedule 36 to FA 2008 only applies to business premises, but it is often necessary to value private premises or assets on such premises, e.g. for IHT, the valuation of all types of property is an essential form of check.
35. The valuation power introduced in Schedule 48 contains safeguards which go beyond those in current legislation. In particular, a valuation inspection can only be carried out with either the agreement of the relevant person (usually the occupier) or the tribunal. There is no facility to make an unannounced visit.